S. HRG. 100-239, PT. II

INDIAN DEVELOPMENT FINANCE CORPORATION ACT—Part II

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 721

TO PROVIDE FOR AND PROMOTE THE ECONOMIC DEVELOPMENT OF INDIAN TRIBES BY FURNISHING THE NECESSARY CAPITAL, FINANCIAL SERVICES, AND TECHNICAL ASSISTANCE TO INDIAN OWNED BUSINESS ENTERPRISES AND TO STIMULATE THE DEVELOPMENT OF THE PRIVATE SECTOR OF INDIAN TRIBAL ECONOMIES

OCTOBER 15, 1987
WASHINGTON, DC

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INDIAN DEVELOPMENT FINANCE CORPORATION ACT

THURSDAY, OCTOBER 15, 1987

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:04 a.m., in room 495, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Murkowski, and McCain.

STATEMENT OF HON DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will come to order.

This morning, the committee will consider S. 721, the Indian Development Finance Corporation Act. This hearing is the third in a series on this bill and is intended to provide an opportunity for representatives of the Administration, private business, and Indian tribal leaders to discuss the proposed corporation.

This bill establishes a federally chartered corporation designed to meet the unique and distinctive needs for Indian business development by acting as a mediator between established sources of private capital and Indian owned business enterprises.

On April 9 of this year, this committee held a hearing to examine the general economic development conditions across Indian country. It was pointed out at that hearing that severe unemployment problems continue to persist in Indian country, and in many respects, the economic conditions of Indian people continue to get worse rather than better.

One factor essential to improving these conditions but which is generally not available in the private sector for Indian business development is start-up capital. This proposal is intended to meet this crucial need by providing investment capital through the development finance corporation.

However, the corporation is much more than simply a source of start-up capital. S. 721 would establish a financial institution available for the long-term needs all across Indian country. This institution would be subject to control of the Indians themselves through the issue of common stock with shareholder voting rights, including rights to elect a board of directors.

It would be up to the board of directors to implement Congress' intention by hiring management skilled in the development of private business enterprises on Indian reservations and formulating

sound policies to guide the operation of the corporation. In addition to investment authority, they would have available an arsenal of financial tools and resources.

These services must be provided in a way which is effective and represents the level of discipline necessary in the private sector. Consequently, we have asked representatives from private financing firms to discuss this proposal. Obviously, we will be happy to consider any changes which may be recommended to enable the corporation to relate to the private sector in a productive manner.

[The text of S. 721 follows:]

II

100TH CONGRESS
1ST SESSION

S. 721

To provide for and promote the economic development of Indian tribes by furnishing the necessary capital, financial services, and technical assistance to Indian owned business enterprises and to stimulate the development of the private sector of Indian tribal economies.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 1987

Mr. INOUYE introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide for and promote the economic development of Indian tribes by furnishing the necessary capital, financial services, and technical assistance to Indian owned business enterprises and to stimulate the development of the private sector of Indian tribal economies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Development Finance Corporation Act".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) a special relationship has existed between the United States and the Indian tribes which is recognized in clause 3, section 8, article I of the United States Constitution,

(2) Congress, through statutes, treaties and the exercise of administrative authorities, has implemented the Federal Government's responsibility for the protection and preservation of Indian tribes and their resources,

(3) despite the availability of abundant, natural resources on Indian lands and a rich, cultural legacy which places great value on self-determination, self-reliance and independence, American Indians and Alaskan Natives experience poverty and unemployment along with the associated incidences of social pathology, to an extent unequaled by any other group in America,

(4) the reasons for such unparalleled poverty and unemployment have been widely studied and documented by the Congress, the General Accounting Office, the United States Department of the Interior, private academic institutions and the Indian tribes themselves and that such studies have consistently identified as fundamental obstacles to balanced economic growth and progress—

(A) the very limited availability of long term development capital and sources of financial credit necessary to support the development of a private sector economy in Indian country comprised of Indian owned business enterprises,

(B) the lack of effective control by the Indians over their own lands and resources, and

(C) the scarcity of experienced Indian managers and technicians,

(5) previous efforts of the Federal Government directed at stimulating Indian economic development through the provision of grants, direct loans, loan guarantees, and interest subsidies have fallen far short of their objectives due to—

(A) inadequate funds,

(B) lack of coordination,

(C) arbitrary project selection criteria,

(D) politicalization of the delivery system, and

(E) other inefficiencies characteristic of a system of publicly administered financial intermediation, and

(6) the experience acquired by multilateral lending institutions among the so-called lesser developed countries has demonstrated the value and necessity of de-

velopment financing institutions in achieving economic growth in underdeveloped economies and societies which are strikingly similar to Indian and Alaskan Native communities in relation to such matters as control over natural resource management and the absence of experienced, indigenous managers and technicians, as well as the availability of long term development capital and private sources of financial credit.

(b) It is hereby declared to be the policy of Congress that, in fulfillment of its special and longstanding responsibility to the Indian tribes, the Federal Government should provide assistance to the Indian people in their efforts to break free from the devastating effects of extreme poverty and unemployment and achieve lasting economic self-sufficiency through the development of the private sector of tribal economies by establishing a federally chartered, mixed ownership development financing institution which shall provide a broad range of financial intermediary services including working capital, direct loans, loan guarantees and technical assistance utilizing the proven efficiencies of the private market mode of operation.

DEFINITIONS

SEC. 3. (a) For purposes of this Act—

(1) The term "Indian" means any person who is a member of any Indian tribe.

(2) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established under, the Alaska Native Claims Settlement Act (43 U.S.C. 1602)) which is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) The term "reservation" means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or land held by any Alaska Native village or regional or village corporation (as defined in, or established under, the provisions of the Alaska Native Claims Settlement Act).

(4) The term "tribal organization" means the governing body of any Indian tribe or any entity established, controlled, or owned by such governing body.

(5) The term "Indian business enterprise" means any commercial, industrial or business activity—

(A) which is operated for profit,

(B) at least 51 percent of which is owned by Indians or Indian tribes,

(C) which produces or furnishes goods, services, or facilities,

(D) which—

(i) owns at least one share of voting common stock of the Corporation,

(ii) will acquire at least one share of such stock as part of any transaction involving services provided by the Corporation under subsection (b), (c), or (d) of section 102, or

(iii) is owned, chartered, or controlled by any Indian tribe or tribal organization which owns at least one share of such stock, and

(E) whose—

(i) principal place of business is located within the boundaries of an Indian reservation, or

(ii) principal business activities are determined by the Corporation to be directed at contributing to the economy of any Indian tribe.

Such term includes any entity which is wholly owned or controlled by any commercial, industrial or business activity described in the preceding sentence.

(6) The term "Corporation" means the Indian Development Finance Corporation established under section 101(a).

(7) The term "Secretary" means the Secretary of the Interior.

TITLE I—ESTABLISHMENT OF CORPORATION

CREATION

SEC. 101. (a) There is hereby established the Indian Development Finance Corporation.

(b) The Corporation shall have succession until dissolved by Act of Congress. Only the Congress shall have the authority to revise or amend the charter of the Corporation.

(c) The principal office of the Corporation shall be in the District of Columbia and, for purposes of venue, the Corporation shall be treated as a resident of the District of Columbia.

FUNCTIONS

SEC. 102. (a) It shall be the duty of the Corporation to—

(1) provide development capital through the financial services that the Corporation is authorized to provide under subsections (b), (c), and (d);

(2) encourage the development of new and existing Indian business enterprises eligible for its assistance by providing and coordinating the availability of—

(A) long term capital and working capital,

(B) loans, loan guarantees and other forms of specialized credit, and

(C) technical and managerial assistance and training;

(3) maintain broad based control of the Corporation in its voting stockholders;

(4) encourage active participation in the Corporation by Indian Tribes and individuals by ownership of its equity securities;

(5) assist in strengthening the private sector of Indian tribal economies through the development of Indian business enterprises whose activities are directed at contributing to such economies.

(b)(1) The Corporation may—

(A) make loans or commitments for loans to any Indian business enterprise, or

(B) purchase or discount any obligations of an Indian business enterprise,

if such enterprise meets the requirements of paragraph (2).

(2) An Indian business enterprise meets the requirements of this paragraph if the Corporation makes an independent determination that—

(A) such enterprise has or will have—

(i) a sound organizational and financial structure,

(ii) income in excess of its operating costs,

(iii) assets in excess of its obligations, and

(iv) a reasonable expectation of a continuing demand for—

(I) its production, goods, commodities, or services, or

(II) its facilities, and

(B) the loan or obligation of such enterprise will be fully repayable in accordance with the terms and conditions of such loan or obligation.

(3)(A) Loans made by the Corporation under this subsection shall be—

(i) repayable in not more than 40 years after the date on which such loan is made, and

(ii) in the case of a loan repayable in more than 5 years, amortized with regard to both principal and interest.

(B) In setting the terms, rates, and charges for loans made under this subsection the objective of the Corporation shall be to provide the type of credit needed by Indian business enterprises at the lowest reasonable cost and on a sound business basis, taking into account—

(i) the cost of money to the Corporation,

(ii) the necessary reserve and expenses of the Corporation, and

(iii) the technical and other assistance attributable to loans made available by the Corporation under this subsection.

(C) The terms of any loan made under this subsection may provide for interest rates which vary from time to time during the repayment period of the loan in accordance with the rates being charged by the Corporation for new loans at such times.

(4) The proceeds of a loan made under this subsection may be advanced by the borrower to its members or stockholders under circumstances permitted under the bylaws or rules of the Corporation.

(c)(1) The Corporation may guarantee all or any part of the principal and interest of any loan made by any State or federally chartered lending institution to any Indian business enterprise if—

(A) such loan is to an Indian business enterprise that meets the requirements of subsection (b)(2), and

(B) such loan was made on terms and conditions (including the rate of interest) which would be permissible terms and conditions if such loan were a direct loan made by the Corporation.

(2) The Corporation may impose a charge for any loan guarantee made under this subsection.

(3) No loan may be guaranteed by the Corporation under this subsection if the income from such loan to the lender is excludable from such lender's gross income for purposes of chapter 1 of the Internal Revenue Code of 1986.

(4) Any loan guarantee made under this subsection shall be assignable to the extent provided in the contract of guarantee entered into by the Corporation.

(5) Any guarantee made under this subsection shall be uncontestable, except in the case of fraud or misrepresentation of which the holder had actual knowledge at the time he acquired the loan.

(6) The Corporation, in lieu of requiring the original lender to service a loan guaranteed under this subsection until final maturity or liquidation, may purchase such guaranteed loan for an amount equal to the balance of the principal and the amount of interest accrued thereon without penalty if the Corporation determines that—

(A) the liquidation of such guaranteed loan would result in the insolvency of the borrower or deprive the borrower of assets essential to its continued operation,

(B) such guaranteed loan will be repayable with revision of the loan rates, terms, payment periods, or other conditions consistent with loans made by the Corporation under subsection (b), and

(C) the lender or other holder of such guaranteed loan is unwilling to make such revision.

(d)(1) For purposes of providing long-term capital and working capital to Indian business enterprises, the Corporation is authorized to purchase, or make commitments to purchase, up to 25 percent of the equity or ownership interest in any Indian business enterprise if the Corporation determines, after a full and complete appraisal of all project and business plans associated with the investment taking into account the criteria set forth in subsection (b)(2) that such an investment does not expose the Corporation to any unreasonable business risks considering the applicable standards prevailing in the field of development finance as applied to Indian economic development (or, in light of the socio-economic, political and legal conditions unique to Indian reservations).

(2) The Corporation is also authorized to supervise or participate in the management of Indian business enterprises in which an investment has been made under paragraph (1) according to such terms and conditions as are agreed to by the Corporation and principals of the enterprise, including the assumption of a directorship in the corporate body of such Indian business enterprise by an officer of the Corporation.

GENERAL POWERS

SEC. 103. In carrying out the provisions of this Act, the Corporation shall have the power, consistent with the provisions of this Act—

(1) to adopt and alter a corporate seal, which shall be judicially noticed,

(2) to make agreements and contracts with persons, Indian tribes, and private or governmental entities and to make payments or advance payments under such agreements or contracts without regard to section 3324 of title 31, United States Code, except that the Corporation shall provide financial assistance only in accordance with this Act,

(3) to—

(A) lease, purchase, accept gifts or donations of, or otherwise to acquire,

(B) own, hold, improve, use, or otherwise deal in or with, and

(C) sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of,

any property, real, personal, or mixed, or any interest therein,

(4) to sue and be sued in its corporate name and to complain and defend in any court of competent jurisdiction,

(5) to represent itself, or to contract for representation, in all judicial, legal, and other proceedings,

(6) to make provision for and designate such committees, and the functions thereof, as the Board of Directors may deem necessary or desirable,

(7) with the approval of the agency concerned, to make use of services, facilities, and property of any board, commission, independent establishment, or executive agency or department of the executive branch in carrying out the provisions of this act and to pay for such use (such payments to be credited to the applicable appropriation that incurred the expense),

(8) to use the United States mails on the same terms and conditions as the executive departments of the United States Government,

(9) to obtain insurance or make other provisions against losses,

(10) to participate with one or more other financial institutions, agencies, instrumentalities, trusts, or foundations in loans or guarantees made under this Act on terms as may be agreed upon,

(11) to accept guarantees from other agencies for which loans made by the Corporation may be eligible,

(12) to establish one or more regional offices, as may from time to time be authorized by the Board of Directors in order to more efficiently serve the widely disbursed Indian population,

(13) to buy and sell—

(A) obligations of, or instruments insured by, the United States or any agency or instrumentalities thereof, or

(B) securities backed by the full faith and credit of any such agency or instrumentality,

(14) to make such investments as may be authorized by the Board of Directors of the Corporation,

(15) to establish such offices within the Corporation as may be necessary including offices for—

(A) Project Development,

(B) Technical Assistance and Training,

(C) Project Evaluation and Auditing,

(D) Fiscal Management, and

(E) any other offices as may from time to time be authorized by the Board of Directors, and

(16) to exercise all other lawful powers necessarily or reasonably related to the establishment of the Corporation in order to carry out the provisions of this Act and the exercise of its powers, purposes, functions, duties, and authorized activities.

BOARD OF DIRECTORS

SEC. 104. (a) The powers of the Corporation shall be vested in the Board of Directors.

(b)(1) The Board of Directors shall consist of the following twelve members:

(A) one officer of the United States Government;

(B) six individuals who represent the Indian tribes which are shareholders in the Corporation,

(C) the President of the Corporation, and

(D) four shareholders in the Corporation who are not described in subparagraph (A), (B), or (C).

The President of the Corporation shall not be entitled to vote as a member of the Board of Directors.

(2)(A) The initial members of the Board of Directors (other than the President of the Corporation) shall be appointed by the President by and with the advice and consent of the Senate.

(B) In making appointments under subparagraph (A) and paragraph (4)(B), the President shall take into account the experience of the individual in private business enterprises and in development or commercial financing. The individuals appointed to represent Indian tribes which are shareholders shall be Indians and shall only be appointed after the President has consulted with, and received nominations from, such tribes. No more than five of the ten members of the Board of Directors described in subparagraphs (B) and (D) of paragraph (1) may be members of the same political party.

(3)(A) The term of office for initial members of the Board of Directors described in paragraph (1)(B) shall expire at the commencement of the first annual meeting of the

shareholders of the Corporation held after the date on which subscriptions have been paid for at least 10 percent of the common stock initially offered for sale to Indians tribes.

(B) The term of office for initial members of the Board of Directors described in paragraph (1)(D) shall expire at the commencement of the first annual meeting of the shareholders of the Corporation held after the date on which subscriptions have been paid for at least 10 percent of the common stock initially offered for sale to the public.

(C) Except as otherwise provided in this paragraph, the term of office for any members of the Board of Directors shall be 5 years.

(4)(A) Any vacancy on the Board of Directors created by the expiration of the term of office shall be filled by an individual elected by the shareholders in an election held under the bylaws of the Corporation.

(B) If a vacancy occurs on the Board of Directors prior to the expiration of the term of office to which the member was elected or appointed, the President shall appoint an individual, by and with the consent of the Senate, to fill such vacancy until the expiration of such term of office.

(5) No individual may be elected to serve more than 2 terms on the Board of Directors.

(6) A member of the Board of Directors may be removed from office by the President only for neglect of duty or malfeasance in office.

(c)(1) The Board of Directors shall establish the policies of the Corporation and shall supervise the management of the Corporation.

(2) A majority of the Board of Directors shall constitute a quorum and any action of the Board of Directors shall be effected by majority vote of all members of the Board of Directors.

(3) The Board of Directors shall annually elect from among its members a Chairman and Vice Chairman.

(4) The Board of Directors shall adopt, and may amend, such bylaws as are necessary for the proper management and functioning of the Corporation.

(5)(A) The Board of Directors shall meet at any time pursuant to the call of the Chairman and as may be provided by the bylaws of the Corporation, but not less than quarterly.

(B) Subject to such rules adopted by the Board of Directors as are necessary for the orderly conduct of business, all meetings of the Board of Directors shall be open to representatives of Indian tribes, Indian business enterprises, and Indian organizations and any individual who has an identifiable interest in the affairs of the Corporation. The Board of Directors may meet in private executive session if the matter

under discussion in such session involves any matter which may impinge on the right of privacy of any individual.

(d) Each member of the Board of Directors not otherwise employed by the Federal Government or a State government shall receive compensation at a rate equal to the daily rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day, including traveltime, he or she is engaged in the actual performance of his or her duties as a member of the Board of Directors. A member of the Board of Directors who is an officer or employee of the United States Government or of a State government shall serve without additional compensation. All members of the Board of Directors shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

OFFICERS; EMPLOYEES

SEC. 105. (a) The Board of Directors shall appoint a President of the Corporation. The President of the Corporation may be removed from office by the Board of Directors in accordance with the bylaws of the Corporation.

(b) The President of the Corporation shall serve as the chief executive officer of the Corporation. Subject to the direction of the Board of Directors and the general supervision of the Chairman, the President of the Corporation shall have the responsibility for carrying out the policies and functions of

the Corporation, and shall have authority over all personnel and activities of the Corporation.

(c) The President of the Corporation, with the approval of the Board of Directors, shall have the authority to appoint and fix the compensation and duties of such officers and employees as may be necessary for the efficient administration of the Corporation. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE

SEC. 106. (a) The financial disclosure provisions of the Ethics in Government Act of 1978 (92 Stat. 1824; Public Law 95-521) applicable to individuals occupying positions compensated under the Executive Schedule shall apply to the members of the Board of Directors, the officers of the Corporation and to employees of the Corporation whose position is compensated at a rate equivalent to that payable for grade GS–16 or above of the General Schedule established by chapter 53 of title 5, United States Code. The financial disclosure provisions of the Ethics in Government Act of 1978 shall apply to the Corporation as if it were a Federal agency.

(b) Any provision of law governing post-Federal employment activities shall not apply to former Federal employ-

ees who may be employed by the Corporation while acting on behalf of the Corporation.

(c)(1) Except as permitted by paragraph (3), no member of the Board of Directors shall vote on any matter respecting any application, contract, claim, or other particular matter pending before the Corporation, in which, to his knowledge—

(A) such member,

(B) his spouse, child, or partner,

(C) an organization (other than the Corporation) in which he is serving as officer, director, trustee, partner, or employee, or

(D) any person or organization with whom he is negotiating, or has any arrangement concerning, prospective employment,

has a financial interest.

(2) Action by any member of the Board of Directors contrary to the prohibition contained in paragraph (1) shall be cause for removal of such member pursuant to section 104(b)(6), but shall not impair or otherwise affect the validity of any otherwise lawful action by the Corporation in which such member participated.

(3) The prohibition contained in paragraph (1) shall not apply if the member first advises the Board of Directors of the nature of the particular matter in which he or she pro-

poses to participate and makes full disclosure of such financial interest, and the Board of Directors determines by majority vote that the financial interest is too remote or too inconsequential to affect the integrity of such member's services for the Corporation in that matter. The member involved shall not participate in such determination.

(d) Subsection (a) of section 207 of title 18, United States Code (and subsections (f), (h), and (j) of such section to the extent they relate to subsection (a)) shall apply to former members of the Board of Directors, officers, and employees of the Corporation as if they were former officers or employees of the executive branch of the United States Government. Such section shall apply to the Corporation as if it were an agency of the executive branch of the United States Government.

ANNUAL MEETINGS

SEC. 107. (a) The Corporation shall hold an annual meeting of its shareholders which shall be open to the public. At such meeting, the Corporation shall give a full report of its activities during the year and its financial condition and may present proposals for future action and other matters of general concern to shareholders and Indian business enterprises eligible for services from the Corporation.

(b) Shareholders and representatives of Indian business enterprises may present motions or resolutions at the annual meeting of shareholders relating to matters within the scope

of this Act and may participate in the discussion thereof and other matters on the agenda of such meeting.

(c) At least 30 days notice of the time and place of the annual meeting required under subsection (a) shall be given to all shareholders.

TAX STATUS

SEC. 108. (a) The Corporation, its franchise, capital, reserves, surplus, income, and intangible property shall be exempt from all taxation now or hereafter imposed by the United States, or by any State, county, municipality, Indian tribe, or local taxing authority, except that—

(1) any real property owned in fee by the Corporation shall be subject to State, territorial, county, municipal, tribal, or other local taxation to the same extent, according to its value, as other similarly situated and used real property without discrimination in the valuation, classification, or assessment thereof;

(2) the Corporation and its employees shall be subject to any nondiscriminatory payroll and employment taxes intended to finance benefits based upon employment.

(b) Any bond, note, or other evidence of indebtedness issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the

United States, by any territory thereof, or by any State, county, municipality, Indian tribe, or local taxing authority.

REPORTS TO CONGRESS

SEC. 109. The Board of Directors of the Corporation shall report annually to the appropriate committees of the Congress on the Corporation's capital, operations, and financial condition. Such report shall include recommendations for legislation needed to improve the services of the Corporation.

CONFORMING AMENDMENTS

SEC. 110. (a) Paragraph (2) of section 9101 of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) the Indian Development Finance Corporation.".

(b) Paragraph (3) of section 9107(c) of such title is amended by inserting "the Indian Development Finance Corporation," after "the Regional Banks for Cooperatives,".

(c) Paragraph (2) of section 9108(d) of such title is amended by inserting "the Indian Development Finance Corporation," after "the Regional Banks for Cooperatives,".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"President, Indian Development Finance Corporation.".

TITLE II—CAPITALIZATION

ISSUANCE OF STOCK

SEC. 201. (a)(1) The Corporation is authorized to issue shares of stock in the Corporation in an amount determined by the Board of Directors.

(2) The Corporation is authorized to redeem or repurchase any share of stock issued by the Corporation at a price determined by the Board of Directors.

(b)(1) At least 60 percent of the voting common stock issued by the Corporation which is outstanding at any time shall be owned by Indian tribes and the alienation of such stock shall be limited to sales to other Indian tribes or to the Corporation. The remaining 40 percent of the voting common stock issued by the corporation shall be available for purchase by the public.

(2) Subject to the restrictions imposed under paragraph (1), the Corporation may issue shares of stock in such classes having such rights and privileges as the bylaws shall prescribe.

(3)(A) No person or Indian tribe may own more than 5 percent of the total value of all outstanding voting common stock of the Corporation at any time.

(B) The restrictions imposed under subparagraph (A) shall not apply with respect to stock issued under subsection

(c) or (d) and such stock shall not be taken into account under subparagraph (A).

(c)(1) The Corporation shall offer a total of 100,000 shares of common stock of the Corporation for sale at $250 per share to Indian tribes. The number of such shares of stock available for purchase by each Indian tribe shall be determined on the basis of an equitable formula established by the Board of Directors.

(2)(A) The Corporation shall offer a total of 100,000 shares of common stock of the Corporation for sale at $250 per share to the United States for the benefit of Indian tribes.

(B) The Secretary shall purchase for the benefit of any Indian tribe the number of shares of stock offered under subparagraph (A) which is equal to the number of shares of stock purchased by such tribe under the offer made under paragraph (1).

(3) The offers made under paragraphs (1) and (2) shall remain open until the date which is 5 years after the date on which such offer is initially made.

(d)(1) At any time after the date which is one year after the date on which the offer is initially made under subsection (c)(1), the Corporation shall offer 80,000 shares of preferred stock of the Corporation for sale to the United States at $500 per share.

(2) The offer made under paragraph (1) shall remain open until the date which is 5 years after the date on which such offer is initially made.

(3) The Secretary shall purchase 40,000 shares of stock offered for sale under paragraph (1) by the date which is 2 years after the date on which such offer is initially made and shall purchase the remaining shares of stock so offered by the date which is 3 years after the date on which such offer is initially made. Such stock shall be held by the Secretary until such time as the Corporation offers to redeem such stock at $500 per share.

(4) The preferred stock offered for sale under paragraph (1) shall be nonvoting stock having a right of first preference to the assets of the Corporation over all other stock issued by the Corporation.

(e)(1) Notwithstanding any other provision of law, the Secretary shall use any funds held by the Secretary in trust for the benefit of an Indian tribe to purchase such number of shares of stock in the Corporation as the governing body of the tribe may request the Secretary to purchase on behalf of the tribe.

(2) Any share of stock purchased by the Secretary under paragraph (1) with the trust funds of any Indian tribe shall be held in trust by the Secretary for the benefit of the tribe and

shall be voted by the Secretary in accordance with the directions of the governing body of the tribe.

(3) In purchasing shares of stock for the benefit of any Indian tribe under paragraph (1), the Secretary shall first purchase any shares of stock which are offered to such Indian tribe under subsection (c)(1).

(4)(A) The Secretary shall sell or exchange any shares of stock purchased under paragraph (1) upon the request of the governing body of the Indian tribe on whose behalf such shares were purchased.

(B) In the case of a sale or exchange of any shares of stock purchased under paragraph (1) for the benefit of any Indian tribe, the Secretary of the Treasury shall pay to the Secretary for the benefit of such tribe, out of funds in the Treasury not otherwise appropriated, an amount equal to the excess of—

(i) the amount of trust funds of such tribe which were used to purchase such shares of stock, over

(ii) the sum of—

(I) cash, plus

(II) the fair market value of any property, received by the Secretary in such sale or exchange.

(C) If—

(i) the governing body of the Indian tribe on whose behalf any shares of stock were purchased under

paragraph (1) requests the Secretary to sell or exchange such shares, and

(ii) the Secretary is unable to sell or exchange such shares,

the Secretary of the Treasury shall pay to the Secretary for the benefit of such tribe, out of funds in the Treasury not otherwise appropriated, an amount equal to the trust funds of such tribe which were used to purchase such shares.

(D) Any amount paid by the Secretary of the Treasury under subparagraph (B) shall become a noninterest-bearing obligation of the Corporation to the United States.

(E) Upon making any payment under subparagraph (C) with respect to shares of stock—

(i) the Secretary of the Treasury shall succeed to all rights of ownership in such shares, and

(ii) the excess of—

(I) the amount of such payment, over

(II) the fair market value of such shares of stock at the time of such payment,

shall become a noninterest-bearing obligation of the Corporation to the United States.

(F) For purposes of this paragraph, the term "sale or exchange of stock" includes the redemption or repurchase of stock by the Corporation.

(f) The stock or other securities or instruments issued by the Corporation shall, to the same extent as securities which are the direct obligations of the United States, be "exempted securities" within the meaning of the laws administered by the Securities and Exchange Commission.

BORROWING AUTHORITY

SEC. 202. (a)(1) The Corporation is authorized to issue bonds, notes, and other evidences of indebtedness. Such obligations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Board of Directors shall determine after consultation with the Secretary of the Treasury.

(2) The aggregate amount of obligations issued under paragraph (1) shall not exceed an amount equal to the product of—

(A) 10, multiplied by

(B) the sum of—

(i) the paid-in capital of the Corporation, plus

(ii) earnings and profits of the Corporation.

(3) An obligation issued under paragraph (1) may be sold through an agent by negotiation, offer, bid, syndicate sale or otherwise and such transaction completed by book entry, wire transfer, or such other means as may be appropriate.

(b)(1) Until the later of—

(A) the date on which the Secretary of the Treasury determines that evidences of indebtedness issued by the Corporation may be readily sold on the open market at prevailing rates of interest and yield, or

(B) the date which is 20 years after the date of enactment of this Act,

the Corporation may issue bonds, rates and other evidences of indebtedness which are fully and unconditionally guaranteed as to principal and interest by the United States.

(2) The aggregate amount of obligations issued under paragraph (1) which may be outstanding at any time shall not exceed $50,000,000.

(3) An obligation may be issued under paragraph (1) only if the Secretary of the Treasury approves of the terms and conditions of such obligation.

(4) Any obligation issued under paragraph (1) shall be considered to be a lawful investment, and may be accepted as valid security, for all fiduciary, trust, and public funds.

(5) If the Corporation is unable to pay the principal or interest due on any obligation issued under paragraph (1), the Secretary of the Treasury shall pay the amount due on such obligation out of funds in the Treasury not otherwise appropriated. Any amount paid by the Secretary of the Treasury under the preceding sentence shall become an obligation of the Corporation to the United States that—

(A) bears interest at the same rate borne by the obligation with respect to which such payment was made, and

(B) is payable under the same terms.

(c)(1) The Secretary shall enter into an agreement with the Corporation under which the United States shall loan $35,000,000 to the Corporation for the purpose of providing initial operating funds and of enhancing the ability of the Corporation to provide financial services under subsections (b), (c), and (d) of section 102.

(2) The terms of the loan agreement entered into under paragraph (1) shall provide—

(A) for a repayment period of at least 40 years at a rate of interest not to exceed 100.5 percent of the average rate of interest on 7-year Treasury bills of the United States,

(B) for suspension of payment of the interest and principal during the 10-year period beginning on the date such agreement is executed, and

(C) such other terms and conditions upon which the Secretary of the Treasury and the Corporation may agree.

(3) The proceeds of the loan made under paragraph (1) shall be made available to the Corporation upon execution of the loan agreement and such proceeds shall be invested by

the Corporation in any obligations issued by the United States which are fully and unconditionally guaranteed as to principal and interest by the United States. Any interest or income derived from such obligations may be used by the Corporation in providing financial services under subsections (b), (c), and (d) of section 102 or paying operational expenses of the Corporation.

(d)(1) In addition to the loan made under subsection (c) and any guarantees made under subsection (b), the Secretary of the Treasury may purchase any obligations issued by the Corporation under subsection (a) if the Secretary of the Interior holds shares of stock of such Corporation under section 201(d) at the time of such purchase.

(2) No obligation may be purchased by the Secretary of the Treasury under paragraph (1) if the rate of return on such obligation is less than the average rate of return being offered on the date of such purchase on Treasury obligations of comparable maturity.

(3) The Secretary of the Treasury may sell, upon such terms and conditions and at such price as he shall determine, any of the obligations of the Corporation acquired by him under paragraph (1).

TITLE III—AUTHORIZATION OF APPROPRIATIONS

GENERAL OPERATIONAL EXPENSES

SEC. 301. In addition to amounts authorized to be appropriated under section 302, there are authorized to be appropriated for the purpose of carrying out the provisions of this Act, $2,000,000 for fiscal year 1988, and such sums as may be necessary for fiscal years 1989 and 1990.

AUTHORIZATIONS FOR SPECIFIC PROVISIONS

SEC. 302. (a) There are authorized to be appropriated for fiscal year 1988, $25,000,000 for the purpose of carrying out the provisions of section 201(c)(2). Such sum shall remain available until the close of the first fiscal year ending on a date that is more than 5 years after the date on which the offer is initially made under section 201(c)(1).

(b) There are authorized to be appropriated for the purpose of carrying out the provisions of section 201(d)(3) $20,000,000 for the first fiscal year beginning after the date an offer is initially made under section 201(d)(1) and $20,000,000 for the succeeding fiscal year.

(c) There are authorized to be appropriated for fiscal year 1988, $35,000,000 for the purpose of carrying out the provisions of section 202(c).

The CHAIRMAN. On our first witness panel, we will once again be honored to have the Assistant Secretary of Indian Affairs, the Honorable Ross Swimmer. He will be followed by the second panel consisting of Mr. Robert Bennett of Daiwa Securities of America of New York; Mr. Raymond Brown of the First Interstate Bank of California and Treasurer of the United Indian Development Association; Dr. Irving Friedman, a former World Bank executive; and Eddie Basha of Basha's Market Incorporated.

Our third panel consists of the Honorable Alex Lunderman, Chairman of the Rosebud Sioux Tribe; the Honorable Gary Collins, Chairman of the Arapaho Business Council of Fort Washakie; the Honorable John Washakie, Chairman of the Shoshone Business Council; the Honorable Tim Fernando, Governor of the Pueblo of Laguna, who is accompanied by Mr. Ron Solimon, President of Laguna Pueblo Industries; and the Honorable Larry Kinley, Chairman of the Lummi Business Council of Washington.

May I now call upon our friend, Secretary Swimmer. As always, you are welcome, sir.

STATEMENT OF HON. ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. SWIMMER. Thank you, Mr. Chairman.

Mr. Chairman, it is a pleasure for me to be here this morning and present some information to the committee that I hope will aid them as they move through the problems of economic development in Indian country.

I do have a prepared statement that I would like to submit for the record, and then I will briefly summarize my comments concerning the proposed legislation.

The CHAIRMAN. All statements of witnesses will be made part of the record in their entirety.

Mr. SWIMMER. Mr. Chairman, as I think you are aware and other committee members are aware, the Administration has gone on record opposing S. 721. I don't want that to reflect in any way on our certainly favorably feeling toward the committee in its efforts to reach some form of accommodation in Indian country that would aid in the economic development and the creation of jobs which are so desperately needed in Indian country.

I commend this committee, in fact, for its foresight and its willingness to hold hearings such as this and to look into this very serious problem.

We oppose S. 721, however, primarily on the basis that from our research that has been done in the past and from my personal information of visiting on reservations, the issue in economic development is not a lack of capital. Certainly, one would have to say that capital is an issue, but it ranks far down the list as far as need is concerned if we are to develop reservation economies.

Further, my concern about this particular bill is that it sets up, in essence, another Federal institution. It sets up an institution that would be primarily housed in Washington—although branch offices, I believe, are proposed—with substantial funding that is provided by the Federal Government. Most of the investments, although they are considered tribal investments, are actually guaran-

teed by the Federal Government with the right of the tribe or the equity investor to remove himself or itself at any time.

More important than that, I believe that there is not a need now to create another Federal institution to assist in Indian economic development. The Bureau of Indian Affairs does have a substantial grant and loan and guarantee program available. We recognize that in that program, there are problems associated with it as far as the timing, the ability to get loans and grants and capital out to Indian country in a timely way, and in the bureaucratic processes that one has to go through.

However, I will further add that these are not intentional bureaucratic delays. A lot of the problems that we experience in the BIA grant and loan and economic development program, I fear, are the same ones that would be experienced with any other Federal institution that is going to organize itself to provide some form of venture capital to Indian country.

I am further concerned that, just as we have a very difficult time in collecting loans that are made because, often, they are high risk type loans made on reservations, that the same experience would happen with another Federal institution. As was mentioned at the economic summit conference in Navajo by the bankers and individuals from the private sector there, the further away from the borrower that the lender is, the more difficult it is to make it look like a loan or venture capital or anything else. It is eventually considered to be a grant.

In too many cases, that is exactly what has happened in our program. Delinquencies run very high. It is extremely difficult to service the locals.

I might add that finding the capable personnel to work in a Federal system, especially within the Bureau is a problem. If, as I understand the proposed legislation, the new Federal institution is to be primarily Indian controlled, and I would assume that means also there would be an effort to hire Indian people.

That market is very, very tight. We have very few professionals in Indian country who are in the financial institution business. We have had a difficult time just in the Bureau of recruiting people into these types of businesses who understand the nature of how venture capital works and financing and servicing of loans and providing technical assistance and what have you.

In a venture capital operation, we are anticipating that the organization is going to be a partner either in new or developing businesses on the reservation. Again, that partnership is extremely hard to put together when you are speaking from Washington, D.C. and also when you are having a difficult time recruiting people that are going to serve on the board or in the operation and provide the kind of technical assistance that a venture capitalist necessarily does.

My suggestion, as I said in the beginning, is not more capital but maybe a different way of providing capital. We have a grant program with the Bureau of Indian Affairs, and it is my feeling that if there were some law that would provide us the flexibility or the freedom of dealing with venture capitalists in the traditional financial market—and there are thousands of venture capital companies already established around this Nation—that we could interest

them perhaps in working with the Bureau and in putting some of our money with venture capitals that already exist and encourage them to make loans or investments on reservations.

The other part of the argument is that it is not, as I said, the capital that is required, but it is good business deals. We have a real lack of impetus for good business deals, and it is impractical to think that we are going to look at reservations and find a real base of entrepreneurs. Unfortunately, most of the entrepreneurs have been co-opted in most respects by having jobs with the Federal Government on the reservation or working for the Bureau of Indian Affairs or they have left the reservation.

So, to recruit the venture capitalists and the entrepreneurs back to the reservation is a major task also. We find that the lack of experience on the reservation creates those obstacles.

I also think that in economic development, there is a way of bringing jobs to the reservation. We have to make that commitment. If we are going to expect jobs to be on the reservation, then we have to go to the job creating corporations of this country and entice them someway to go to the reservation and aid and assist in developing those jobs.

One of the ways to do that is just cover the cost of doing business on the reservation up front. There is a significant cost. There is very little competitiveness when you compare the attributes of reservation environments with that of a city or town.

Those costs are real and they are important to corporate business doing business on the reservation. But I think if we are to look at creating businesses and creating jobs on the reservation, we need first to go to those companies that are in that business already and not try to establish another organization, especially a Federal bureaucracy, that is going to go out to the reservation and start something new again.

I would be pleased to answer questions if you have any of my testimony or other concerns regarding economic development. I served on the President's Commission for Reservation Economies in which we did a fairly comprehensive study a couple of years ago.

In that study, we recognized that venture capital is important, and it is needed, but I would say that in listing and ranking obstacles, the number one obstacle that was mentioned was lack of tribal government expertise, lack of venture capital expertise on the reservation. That came up in the report 213 times. Lack of venture capital came up 7 times.

So, it is needed, and I think it is available. My concern would be that in setting up another Federal institution, we would take away from Federal resources which we are getting very short of now and divert those from other perhaps more direct ways of encouraging business to locate on the reservation.

Thank you.

[Prepared statement of Mr. Swimmer appears in the appendix.]

The CHAIRMAN. Mr. Secretary, I have been in the Congress now for 28 years, and I have sat through many hearings of this nature, not all on Indian affairs. In fact, it is only in recent times that I have been involved in Indian affairs.

However, I find that each time the Congress submits a proposal which is not in tune with the established institution in the bu-

reaucracy, a thousand and one excuses are made. For example, this morning—and I don't doubt your sincerity—you spoke of the shortcomings of the present program's status—the timing is off, the bureaucratic obstacles, lack of skills, you have difficulty in recruiting, you have difficulty in developing interest in venture capital.

Now, we have been dealing with Indians for at least 200 years, and at least for the past 50 years, hopefully, as sovereigns. I have to question why it is that we seem to always come back to these same reasons that we have had for the past 50 years. What have we done? Each time the Congress comes up with an idea, well, you have bureaucratic delays, lack of skills.

There is no secret that our educational program is miserable. We just passed a bill yesterday. Hopefully, it will be adopted by the Administration. The chances are it will be vetoed, so we will be back to ground zero again. I suppose we will try again and again and again.

The fact remains that the average unemployment on the reservations as of six months ago was 48 percent. That would make black unemployment seem like paradise. It goes as high as 95 percent. It has gotten so bad that instead of being precise as we are with the rest of the Nation when we say 4.9 percent, for Indian unemployment we say approximately 50 percent.

I think we should be deeply concerned. I was hoping that the Administration would come up with suggestions. For example, none of the provisions in the bill are set in concrete. In fact, after we drafted the measure, I saw one little suggestion that I thought would be coming, and if it came, I would be the first to accept it.

Instead of making the headquarters in Washington, it should be in Indian country. That is where it belongs. Indians don't live around here. They live out yonder. And one of your criticisms was that it is too far away from the Indian people. We will make it right next door to them. Maybe it should be in Albuquerque or it might be somewhere in Arizona or it might be up in the Plains. I don't know.

I would hope that you can go back to the drawing board and, instead of telling us how this is bound to fail, tell us how you think it might succeed.

And as far as skills are concerned, I was told the same thing when I became chairman. My colleagues said, you know, I feel sorry for you. You are going to be dealing with a bunch of dingdongs.

I have a staff here that I would compare with any other staff on the Hill, pound for pound. I think we have a better staff here than any other committee you can name. Skill—we are overflowing with skill. Dedication and motivation—we got it.

I think the same thing can happen here, but it is not going to happen if we come up and just say, you know, you are going to find difficulty in getting venture capital. Well, that is no earth-shaking news to me.

If we maintain the present status quo, I am certain 50 years from now we will be holding another hearing like this, and your successor will be giving the same speech. So, I hope you can go back and come up with suggested changes instead of telling us how this is bound to fail.

Senator McCain.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA

Senator MCCAIN. Thank you, Mr. Chairman.

I would like to repeat something that I have stated on numerous occasions in the past, not only in this hearing room but in other forums around the country, and that is that I and my colleagues in the Senate are deeply appreciative of your chairmanship, the commitment that you have made, the travels that you have made to Indian country including my own State where I would tell you in all candor that you have visited more Native Americans than perhaps some politicians who are from the State of Arizona.

I share your view about the competence and commitment of our staff, and I think that if we are going to see anything meaningful done on behalf of Native Americans in the next year to 2 years, it will be because of your leadership and your commitment. I am deeply appreciative of that.

I share the chairman's view that, unfortunately, we seem to find reasons not to support pieces of legislation rather than trying to either improve or make the necessary changes that would make these proposals acceptable and workable.

Mr. Swimmer, I share your view that one of the major problems is the lack of venture capital, but wouldn't you also agree with me that one of the major reasons for the lack of venture capital is because there is a lack of confidence on the part of the business community that the investment they make on a reservation will be protected in the same fashion that it would be if they made that investment somewhere else? Would you agree with that thesis?

Let me just give you an example. Recently, there was a 5-year negotiation on the Navajo Reservation for the construction of a recreation marina which was going to employ 400 Navajos. It was approved by the Department of Interior and the Park Service and the Navajo Tribal Council. Then, there was a change in the tribal government, and that lease was negated out of hand.

This sends a message, I think, to a lot of people who want to do business on reservations that they are to some degree subject to the vagaries of tribal politics.

Mr. SWIMMER. I would agree with that very much.

Senator MCCAIN. So, would you agree then that part and parcel of this effort that we are making—and I know of your commitment in trying to alleviate this situation—would be that we could establish an environment—and I am sure that witnesses on the other panels who are in the business community would give us some more information—but in the positions of leadership that you held, didn't you run into that problem quite often, the lack of confidence on the part of the business community?

Mr. SWIMMER. I think we might have been more fortunate, but we didn't have that particular problem. Part of it was the location in Oklahoma because of the integration of the economy there. But in our study on the reservations, we determined that to be a problem.

Senator MCCAIN. Mr. Swimmer, did you have a chance to examine the series of articles that was run in the Arizona Republic?

Mr. SWIMMER. I haven't been able to see all of them. I have seen up to, I think, Thursday or Friday.

Senator MCCAIN. I would appreciate your views on that series of articles. Perhaps those articles will bring to the attention of at least people in the West and perhaps throughout the country the real serious situation that we face.

There are some rather serious charges leveled, not at you, obviously, but at the BIA, and I would be very pleased to hear your responses to some of those allegations. I know that you grow weary, from time to time, but I also know that those articles were a result of very in-depth investigations, and I think they are having some impact, and I think they should.

Mr. SWIMMER. Very definitely.

Senator MCCAIN. Are you in agreement with the thrust of some of those articles?

Mr. SWIMMER. They point out some real difficulties in dealing with the Federal bureaucracy, and I think it would be true of most agencies in the Federal Government today, many of the things they point out.

Unfortunately, what they leave out is the scope of coverage that the Bureau of Indian Affairs is required to do, is mandated to do by law, and it is often overlooked that it is more than just a few isolated cases. When you are acting as trustee for more than 250,000 people, once in a while, an *Austin Walker* falls through the cracks and you don't handle it properly. In this case, our lawyers didn't handle it properly.

There are other allegations that are from years back, including those of the Indian Health Service. The articles tended to go into past history for years and years and then, in some cases, make it appear that this is the same practice that is going on today.

I don't think that is necessarily true, and I think it tended to malign a lot of Bureau of Indian Affairs employees who are not incompetent and who are trying to do a job but are constrained with the bureaucracy and with Acts of Congress and with the administrative requirements that we must go through.

I think there could be some parallels with other agencies. I notice that the Bureau wasn't the only one singled out for criticism, and I remember and can point to many other difficulties of the Federal Government trying to deliver services for people.

In some respects, that is why my testimony is such as it is today, because I do not believe that the problem in Indian country is going to be solved by Congress or by the Bureau of Indian Affairs. I don't think that putting more money on the table solves the problem. Rather, working within the system that is designed to develop jobs and to create economies will, in fact, create those jobs.

The proposal that you had on the table the other day, I think, is an excellent example of what would be a way of turning around jobs in Indian country literally over night and would create employment that this bill can't create and that millions and millions of dollars won't be able to create. You must cover the cost of doing business on the reservation. If you cover that cost and if you encourage industry to go there, they will.

There are two industries in this country that are apparently the most profitable or have been have had no trouble in doing business on reservations. They have had no trouble in raising venture capital. They have been very successful, and that is the energy business and the gambling business.

However, it must be profitable. You will not get the private sector on the reservation unless they can make a profit.

Senator MCCAIN. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Secretary.

Mr. SWIMMER. Thank you.

The CHAIRMAN. Our next panel consists of Mr. Robert Bennett, Mr. Raymond Brown, Dr. Irving Friedman, and Mr. Eddie Basha.

Mr. Bennett, we will begin with you. I thank you very much for your presence here.

STATEMENT OF ROBERT BENNETT, SENIOR VICE PRESIDENT, DAIWA SECURITIES OF AMERICA, NEW YORK, NY

Mr. BENNETT. Good morning, Mr. Chairman, and members of the committee.

I would first like to introduce myself. My name is Robert Bennett. I am a senior vice president of Daiwa Securities of America. We are investment bankers, underwriters, brokers, and dealers.

I am pleased to be here today in response to the committee's invitation to comment on S. 721, the Indian Development Finance Corporation Act. Before doing so, I think it would be appropriate to describe my firm's and my credentials and also to tell you why we welcome this opportunity to lend our assistance to the committee and our support to this important piece of legislation.

Mr. Chairman, my statement which has been submitted takes about 10 minutes to read. With your indulgence, I would like to simply summarize it and perhaps save some time for questions.

The CHAIRMAN. Your full statement will be made part of the record.

Mr. BENNETT. First, I describe both Daiwa Securities, my employer, and our parent in Japan. Also, I have outlined my experience in finance, both corporate and government, and I hope that recitation will establish our credentials to comment on S. 721.

Then, I attempted to answer the question of need for an Indian Development Finance Corporation. Here, I leaned heavily on the contacts with the Navajo Nation in which several of my colleagues have been active. Also, I made reference to what I thought was an excellent report, The Compendium of American Indian Development Finance Institution, a report which was submitted to this committee in April of 1986.

The third part of my statement set out recommended modifications to the bill. Prior to that, I had also discussed—which I think is equally important to the financial aspects of the Indian Development Finance Corporation—the non-financial role as facilitator, advisor, for oversight, feasibility studies, and the like which we would suggest that the Congress direct the corporation to intimately involve itself.

I had a recommendation that the long-term goal of the corporation should be to phase out government ownership and, in the fullness of time, have the IDFC a completely private company. I believe that there should be a policy of fair return to IDFC shareholders and urged that whenever feasible, a cash dividend be paid to the shareholders.

We emphasized the role of the corporation as a guarantor of loans to be made to Indian enterprises by other lenders.

I feel that the proposed tax exemption granted to the obligations of the IDFC is not feasible or a desirable factor and therefore should not be incorporated in the powers of the corporation. We feel that the tax exemption privilege is more properly reserved for the several States, their instrumentalities, and municipalities, and we don't think it would make that much difference in the cost of capital to the corporation.

I also think that the exemption from corporate taxes should be studied. I think that equity would call in time before that tax exemption should disappear, perhaps at such time as the government interests are withdrawn from the corporation.

I think there should be modifications in the restrictions on stock ownership. From a market standpoint, the number of authorized shares should be increased and the actual price reduced.

I think that the corporation's borrowing limitations should be modified. I think that the $50 million figures that I find contained in the bill is too low, and there is a leverage factor incorporated which I think is too high. In any case, our suggestion would be to have the limitations on the corporation's authority to borrow more in line with other development finance corporations which would suggest three or four times the corporation's equity.

We suggest several changes in IDFC's investment authority. We would reduce the maximum maturity on loans. A 40-year maximum takes the form more of a grant and is much more appropriate for infrastructure type lending and is well out of the range of normal business and commercial maturities on loans.

There is a condition that loans beyond five years be amortized. For the reason stated in the statement, we think that should be eliminated.

Also, the limitations on the size of any individual equity or other commitment on the part of the corporation should either be eliminated or significantly increased.

We propose that a stock purchase requirement be incorporated in the bill. That is, users of the facilities of the corporation, be they borrowers, those who would make the use of the corporation's ability to guarantee obligations, or those organizations which seek to induce the corporation to make an equity investment, all be required on some modest basis to purchase and own modest amounts of the stock of the corporation.

The section on the allocation of board seats and classes of directors we have suggested should be restudied. In all candor, we think that the heavy representation by Indian organizations is inconsistent with the investment of the public, which hopefully, will come about in the fullness of time. For the tribes and the government to have virtual control of the organization at that time would be inequitable.

Mr. Chairman, that concludes the outline of my statement. Again, I would like to say how pleased and honored I am to be invited to appear before you this morning. If I can answer any questions, I would be delighted to do so.

[Prepared statement of Mr. Bennett appears in the appendix.]

The CHAIRMAN. Thank you very much, Mr. Bennett.

Has your organization invested in Indian enterprises or in Indian country?

Mr. BENNETT. No, sir; not at this point. We have been involved in studying several proposals, but we have not made any investment.

I would say, Mr. Chairman, in all candor, we are in the business of financing organizations and rarely make an investment per se in any client company, if you will, that we do work for.

We do have a wholly owned subsidiary which is in the venture capital business, but in the normal course of things, that organization would not be involved in making investments in the United States.

The CHAIRMAN. If changes as suggested by you were incorporated in this measure, would your organization be purchasing stock in this corporation?

Mr. BENNETT. We would certainly consider it. I don't want to try to duck the issue, but as I said, we don't normally do that. Certainly, this is something we would give serious consideration to, but I can't be any more explicit than that.

The CHAIRMAN. With the adoption of this measure, would you consider doing business providing loans and such for Indian enterprises in the same manner as you would with as any other business?

Mr. BENNETT. Yes, sir; I would, particularly if the organization could be authorized and put together to fill the parallel role that I touched on, that is to make sure that the investments being made by the organization were very sound ones. I think there would be no question that we would welcome the opportunity to bend every effort to raise money for the organization.

The CHAIRMAN. Would you be concerned that this corporation would not be able to entice or recruit men and women of adequate talent to serve in important positions?

Mr. BENNETT. No; I wouldn't be concerned. I must admit I don't have the same intimacy with the job and talent market, particularly in Indian country, that Mr. Swimmer has, but I would think this would be a very exciting opportunity both for Indian professionals and for non-Indian professionals.

The CHAIRMAN. Mr. Bennett, I thank you very much.

I will now ask my colleague from Alaska, Senator Murkowski, to assume the Chair, because I have to return to vote right now, but I will be back.

Mr. BENNETT. Thank you, Mr. Chairman. Would you like me to remain at the table?

The CHAIRMAN. Yes, please.

Senator MURKOWSKI [acting chairman]. Please proceed, gentlemen.

Mr. BENNETT. I guess if there are no more questions, we can go to Mr. Brown.

Senator MURKOWSKI. Yes; thank you. Please proceed, Mr. Brown.

STATEMENT OF RAYMOND C. BROWN, VICE PRESIDENT, FIRST INTERSTATE BANK OF CALIFORNIA, AND TREASURER, UNITED INDIAN DEVELOPMENT ASSOCIATION

Mr. BROWN. My name is Raymond C. Brown. I am an enrolled member of the Washoe Tribe of Nevada and California which is located near Carson City, NV.

I am here today in my capacity as a board member of the United Indian Development Association which is located in Los Angeles and also as a vice president of First Interstate Bank of California located in San Francisco.

Initially, I will explain some of my background in these two functions and make some comments of my own. I do not have a prepared statement.

UIDA is a national non-profit consulting organization which was formed in 1969 in Los Angeles by American businessmen to assist American Indians to achieve self-sufficiency through business and economic development. Over 18 successful years, UIDA has acquired over $100 million in financing and business opportunities for Indians while starting up 338 new businesses and creating over 2000 new jobs. We have accomplished this with a failure rate of about 5 percent which is well below existing failure rates for new businesses.

UIDA has three offices, two in California and one in Arizona and operates the National Center for American Indian Business and Economic Development which was established to provide technical assistance for Indian enterprises located on reservations. Our national and regional programs have demonstrated that Indian tribes and businesses can be successful given adequate capital and technical assistance.

As with regard to my experience as a banker, I have been with First Interstate Bank of California for approximately 17 years. My current function is as commercial credit supervisor involved in the approval of new loans and administering of the credit policies of the bank.

I have been involved somewhat in Indian financing projects for the bank but in a very small way.

I am here primarily today as a representative from the private financial sector, from the UIDA standpoint, and also as an interested Indian.

I have a few comments on S. 721. I believe that it is a very good bill. I think that it is more or less a breath of fresh air in an area where it is desperately needed. I think it is well documented as to the shortcomings of the current delivery of Indian economic development services to Indian country.

I think that based on the experience that we have been able to achieve at UIDA over the years, it has been shown and demonstrated that Indian businesses can be formed and be successful with proper management and ongoing assistance.

In response to some of the comments earlier, from the standpoint of involvement of private sector financing in economic ventures on Indian reservations, I think that most financial institutions are very reluctant to be involved primarily from the standpoint of the high risk nature of such ventures. Additionally, the trust status of

the Indian lands and the perceived lack of management are also very big problems.

In addition, I think reputations are also at stake as institutions are quite reluctant to finance such high risk projects on an ongoing basis that may affect their financial standing in the financial community if the projects fail.

I think that the venture capitalists, although they are around and they do high risk deals are also reluctant to do Indian country deals because they are too high risk for them and they do not want to take the risk involved or spend the time. I have seen in some instances some venture firms indicating a willingness, but they are just afraid to take that step because it is kind of a step into the unknown.

I think the organization established by S. 721 would serve as a catalyst to bring together Indian country, the venture capitalists, the banks, the insurance companies, and possibly eliminate some of this fear that the financial institutions have.

Senator MURKOWSKI. Do you envision this as kind of a mini World Bank?

Mr. BROWN. Yes; I do. I don't see it as a Federal agency. I could be wrong, but my perception of the corporation would be that of a quasi-federal agency that has some of the good parts of the federal aspect and some of the good parts of a private institution. I think that a World Bank comparison is probably the closest to the way I would envision the organization.

Senator MURKOWSKI. You are a banker, and First Interstate has, obviously, a wide ranging network. What are you folks doing to try to make a private sector contribution to serve the reservation Indians and their needs?

Mr. BROWN. Well, I would say that we as a bank have probably a very low profile in the area.

Senator MURKOWSKI. Why?

Mr. BROWN. I just think that—and I am not speaking for the policies of my bank in particular—I would say banks in general do not want to get into this area because it is high risk.

Senator MURKOWSKI. Yes; but if it is high risk, is there anything that can be done to—is the risk associated with the inability to have adequate collateral or the capacity for repayment or is it the inability to secure property on Indian land and Indian assets?

Mr. BROWN. I think some of all of the above. The risk and the trust aspects of tribal lands are both factors.

Senator MURKOWSKI. Well, don't you think it would be appropriate if the community would address internally the concerns that are necessary so that the private sector can receive assurances that there is an adequate collateral position? Because it has to work both ways. The private sector isn't going to come in unless they are satisfied that they can take a justifiable collateral position that will withstand the test of litigation.

It would seem to me that if we leave this thing open-ended on both ends of the spectrum, it would either cure that default. Then, sure, you have increased risk, but theoretically, this isn't a giveaway program either. It is a loan program funded by the Federal Government on a revolving basis, and we have already discussed the nomenclature of something after a mini World Bank.

I am just curious if you as a banker feel that within the structure of Indian law that there should be some provisions to protect someone who wants to lend into that atmosphere?

Mr. BROWN. Yes; I do. I think that is a key element of the S. 721 legislation in that there is Indian participation. I think the tribal governments are going to have to see that change is necessary.

Senator MURKOWSKI. Well, do you think the tribal governments are ready to accept not only the dictates of having an adequate collateral position from the private sector as well as in S. 721 in the sense of establishing this type of an institution?

Mr. BROWN. I think they are getting closer. I don't think everybody is there yet, but in my own opinion, I think the tribes that succeed are going to have to make this change or they are not going to make it economically.

Senator MURKOWSKI. I didn't hear Mr. Swimmer's testimony, but it would seem to me that the BIA and the tribal community themselves are going to have to face up to that reality. If they are going to want to make investments, they are going to have to be prepared to take the same risk as anyone else that attempts to attract capital, and that is you put up your assets or whatever collateral base you have and you take your chances.

It would seem to me that there should be some clarification on just what is needed in order to do that, because I readily understand the inability of the financial community private sector going into an area where they can't adequately collateralize themselves if they do take a position.

Mr. BROWN. I think the S. 721 creates an agency that would serve as a catalyst to not only make the Indian community realize what they had to do to get around the pitfalls that are scaring away financial interest now and yet at the same time provide a source of funding and on-going project support and tie in the financial private sector also.

Senator MURKOWSKI. I am a little concerned that what we are attempting to do here by this legislation is recognize that we can't attract the private sector in because "the risks are too high" or "the return isn't there" or "the ability to collateralize isn't there," so somehow if we set up a Federal function, the Federal Government will, because of the inefficiencies of the bureaucracy, just get weighed in and take their chances, and I don't think that is good for America's Indian community nor is it good for the Federal Government.

They are going to have to be from the standpoint of financial investment and risk and return treated like anybody else.

Mr. BROWN. I think that it is also an education process, from the standpoint of the financial communities in that dealing with existing bureaucracies, is an unknown and that their experience with them has been so negative that they just do not want to get involved again. I don't think that institutions would necessarily look at it as a giveaway and just jump in because there are guarantees.

I think that there are institutions that really are interested in doing a job in the economic development area for the Indian community and for themselves, but I think it is going to be an educational process to get everybody involved and working in the same direction.

Senator MURKOWSKI. Whom do you propose would—are you going to run this through the private commercial sector or is this going to be a straight government operation?

Mr. BROWN. I would hope it wouldn't be a straight government operation.

Senator MURKOWSKI. That it wouldn't be?

Mr. BROWN. Yes; that it wouldn't be.

Senator MURKOWSKI. I would hope not also, but you are a banker, and you have had some experience with your people. The realization that the private sector looks, as you have already described, at these areas of service as just too much trouble to spend their time and effort in and based on the return, and that is just the hard-nosed business reality.

Are you suggesting that you have some kind of a government guarantee with participation from the private sector institution or like an SBA where there is a 90/10 split?

Mr. BROWN. Possibly, but I think maybe initially it is going to take something like that to get it going, but I think the key to S. 721's success is getting a successful track record and showing that the job can be done and not have to rely on these guarantees on an on-going basis.

Senator MURKOWSKI. You noted in the legislation that the board consists of one officer of the United States Government, six individuals who represent Indian tribes which are shareholders, the president of the corporation and four shareholders in the corporation are not described, whatever that means. It doesn't sound to me like there is much direction from the private sector. It looks like it is all bureaucracy.

Mr. BROWN. Well, that was one of the recommendations that I was going to include was that the board be expanded to 15 to include three high level outside private sector professionals who are very experienced in economics and finance as additional positions on the board.

Senator MURKOWSKI. Do you think there is any room for private sector participation?

Mr. BROWN. I think there has to be.

Senator MURKOWSKI. Well, I do, too.

Would any of the other witnesses care to comment on the general discussion we are having?

Dr. Friedman, I guess I welcome you as a consultant in the Washington Capitol Market Group. Hopefully, you have a lot of money invested out in America's Indian community.

What do you think, gentlemen?

Mr. FRIEDMAN. Mr. Chairman, would you want me to speak now?

Senator MURKOWSKI. All right, Dr. Friedman, let's have your statement now, and we can continue with this discussion after you have finished your presentation.

Mr. BENNETT. Perhaps before Dr. Friedman gets started, I could just reiterate what I said on the subject of the board of directors in my statement and in my summary. That is the board has to have a great reduction of Indian representation and that the board should be made up on a basis which reflects the investment risk of the various parties that would be involved in the organization.

Senator MURKOWSKI. My concern is that the private sector through First Interstate and others that serve broad areas—you know, they have the local knowledge of the area. They may not be in the reservation. Do you have any banks in reservations?

Mr. BROWN. On reservations? No; we have them in close proximity but——

Senator MURKOWSKI. Close proximity. I don't know if there are any banks on reservations, but I assume there are a few.

Mr. BROWN. Well, there used to be one, I think. Well, I think there are two now, one in Navajo and I think the Blackfeet in Montana have recently established one.

Senator MURKOWSKI. The question is, who provides the review process and takes the applications and so forth? We have watched the BIA in the loaning function, and they have their share of problems. Sometimes the problems are based on their inability to say no to a credit that doesn't deserve consideration and the Federal Government picks up the shortfall and away you go. We can crank those programs out a dime a dozen.

The question is, how can you make it realistic and a workable program, because there is an educational process involved in some cases as well. It would seem to me that if there is some way to involve the private sector in the geographical area, it would certainly make more efficient effort to serve the needs of the Indian commercial effort to involve themselves in various enterprises.

I think there has to be an occasional realization that this isn't going to go because either you have inadequate markets or any one of a number of reasons. But somebody has to make some decisions along the line.

Mr. Chairman, we have wandered in and out of S. 721 and my concern was more or less in the area of how we get away from making this just another government giveaway program in the sense of not being able to develop the expertise not only in the Indian community that wants the various considerations to implement their new business ideas, but we use the private sector that is adjacent to in some kind of a guarantee program or involvement.

As you know what happens around here, I have our Anwar hearings in the Energy Committee that started at 9:30, so I am going to have to leave you with the dilemma.

The CHAIRMAN. Thank you, Senator. I assure you that as a member of the Appropriations Committee, the last thing I want to do is to establish and finance another giveaway program. If I thought that this was a giveaway program, I can assure you that we wouldn't be holding a hearing at this moment.

Please continue.

Mr. BROWN. We touched upon my affiliation with First Interstate Bank and their performance in the Indian financing effort, and I said that we had not had a big exposure. I am not here on behalf of First Interstate Bank. I was just speaking in general of banking and not necessarily First Interstate, because I think that generally all banks have the same position. I just wanted to make that clear for the record.

As far as recommendations, I touched on one in your absence. I would recommend that the corporation be increased to 15 board members instead of the 12 proposed to include 3 outside directors

who are very heavily experienced in finance and economics in addition to the proposed 12 as outlined.

I would also recommend that the organization be established out in Indian country or close to it. I think you have already touched on that.

Third, I would recommend if necessary that Congress would have to redirect current appropriations from other areas to get this legislation off the ground. I feel it is a very important piece of legislation that needs to be passed.

Fourth, to the greatest extent possible, I think it should use independent financial intermediaries to perform specialized financial services such as Mr. Bennett's organization or insurance companies or banks or whomever.

Fifth, that technical assistance and training be performed on a contract basis independent of the organization instead of building a large in-house staff. I think it is important to stay away from the aspect of creating a huge bureaucracy or organization that can be run more efficiently as a quasi-government/private organization.

I will be prepared to answer any more questions that you may have.

The CHAIRMAN. Are you concerned that this organization will have great difficulty in enticing talented men and women to serve in important posts?

Mr. BROWN. I don't think so. As I mentioned in your absence, I think it is key to have the Indian representation, the private sector, and have the quasi-government status. I have been going to Indian economic so-called summit meetings for 6 or 8 years now. Initially, they were pretty pathetic and I was pretty disappointed, but in the last two or three years, there is the level of sophistication of the Indian people coming up through the ranks of management which is quite impressive.

At the last meeting last February, some of the questions were so sophisticated that I couldn't believe that they were being asked. The total level of sophistication and skill of people coming up is very exciting, and I think there is a core of people coming on stream that will probably be the forerunner of more people to be turned out that will be capable managers; but management remains a key issue.

The CHAIRMAN. Under the present condition, would your organization invest in Indian enterprises in Indian territory?

Mr. BROWN. Invest in what manner? As through loans or through equity or——

The CHAIRMAN. Anything.

Mr. BROWN. I would think that, although I can't speak for the bank, such proposals could be made to be made attractive to banks such as ours.

The CHAIRMAN. At the present time?

Mr. BROWN. At the present time in the absence of this organization?

The CHAIRMAN. Yes.

Mr. BROWN. I don't believe so. I think that priorities of most of the banks are tuned in towards high quality loans, and the problems that have been involved in dealing with previous government agencies in the loan area are just too great, and they would prob-

ably give it a very low priority. That is not to say they wouldn't do it, but I think the priorities would be quite low.

The CHAIRMAN. But with this corporation, you would consider it?

Mr. BROWN. I think that with a professional approach utilizing the capabilities that would be authorized, yes. I think some packaging alternatives could be put together to be attractive to outside financing organizations.

The CHAIRMAN. I thank you very much, sir.

I am now pleased and honored to call upon Dr. Friedman.

STATEMENT OF IRVING FRIEDMAN, CONSULTANT, WASHINGTON CAPITOL MARKET GROUP, WASHINGTON, DC

Mr. FRIEDMAN. Thank you very much, Mr. Chairman.

I am very honored to be here and very glad to be of any assistance that I can in these deliberations.

I had prepared for you and your committee not a long prepared statement, but I think it might be more useful if I didn't try to read it but just try to give some highlights.

The CHAIRMAN. Dr. Friedman, your full statement will be made part of the record, sir.

Mr. FRIEDMAN. Thank you very much.

You would have no reason to know, but I am not an expert on Indian affairs. I have been asked to come here in order to hopefully be of some use because of my experience in dealing with third world developing countries and the thought that the experience of the multi-lateral development agencies could be relevant for consideration of this bill.

I have tried to read the bill and the various materials that have been presented to me by your staff. So, please keep in mind that I am not here to be an expert in Indian affairs but to hopefully be somewhat of an expert with respect to the multi-lateral development banks and third world conditions and problems.

As for that experience, I have been in the International Monetary Fund and the World Bank a total of 28 years. I was the senior department director of the Monetary Fund, and I was in charge of economic policy and economic staff and economic programs of the World Bank for nearly 10 years. Then I was with Citibank and then with First Boston, and I will not bore you with those details.

However, it is from that background that I speak, and I would like just to emphasize again it is not from a background on Indian affairs but a background of experience in finance and banking and economic development and also as a visiting professor at Fordham and the University of Virginia teaching in these fields.

I would say that as far as the sort of highlights that might be relevant from the third world, they might be put as follows. One is that the multi-lateral development agencies have demonstrated that it is possible to deal successfully with the problems of poverty, unemployment and stagnation. They are not problems which are intractable. They are subject to being dealt with efficiently, carefully and effectively.

That does not mean that there were not many problems or many things to learn from experience in the multi-lateral development agencies. For example, we had to learn from experience that we

had to move from projects of large-scale energy and road building to things like education and health and family planning and other areas. Right now, there is a great deal of concern with environment, and these institutions are spending much more time than in the past in trying to deal with environmental problems and environmental consequences of what they do.

Nevertheless, when you look at the third world countries and think of what these institutions have done and what they would be like today if these institutions had not been operative during the last four decades, I think one has to come to the conclusion that these institutions have demonstrated that these kinds of institutions can make a very positive and lasting contribution to the conditions in these countries.

Second, I would emphasize the fact that in these countries, these institutions act as a catalytic agent. Their very presence brings about activity within the country as well as from the outside. They bring about an activation of the private sector much beyond what is appreciated by the outside world.

It is not merely a matter of who puts out the money. For example, even when you build a dam, most of the work is being done within the country by private firms. These private firms are given business opportunities to expand in a way that they would never have thought possible for them and would never have originated within the country itself were it not for the activities that are initiated by the multi-lateral development agency.

So, there is a kind of a generalized impact on the economy which I believe is very positive.

Third, in relation to the private sector, these institutions have demonstrated repeatedly that it is possible to have mixed institutions and mixed activities. It is possible to bring together private firms and governmental firms in an efficient business partnership, on an individual project level and on the general level. One doesn't have to think of an either/or situation.

It is always useful to have the options that come from a variety of institutions which at times act separately but at times act together. And when it is necessary to act together, they exist, and they don't have to be brought into existence at the time because they are already in existence, and they are available, and they accumulate experience and learn how to work with each other.

That becomes a very positive thing, and I could document this literally in hundreds of examples from actual experience.

Now, I think that perhaps coming from me, one of the things that I might emphasize is the question of the capitalization and the importance of the way in which these institutions, the multi-lateral development banks, have been financed. It could be that it does have lessons for the bill that you are considering here.

The multi-lateral development banks are too often seen as foreign aid institutions. They are essentially not. The multi-lateral development banks are intermediaries between the private sectors of the capital markets and the needs of the developing countries.

They do not finance themselves or their lending is not financed by moneys obtained from budgets. In the financing of a loan of the World Bank or the African Development Bank or the Inter-American Development Bank, the loan is funded from moneys which

have been raised from private sources in the private capital markets.

The development institution acts as an intermediary. It acts as a viaduct, as a bridge, between private sources of finance and the needs of the borrower. Sometimes the borrower is a government. Sometimes the borrower is a private firm. However, the moneys are coming from the private sector.

The role of the government is to give the financial institution credibility with the private investor. That is its function. In some way or another, its credibility has to be achieved with private investors who are going to make loans to this financial institution, the multi-lateral development bank, so that, in turn, it can unlend to its borrowers.

This credibility is very largely obtained by the presence of governments. In the case of the multi-lateral development banks, as I am sure you all know, it is done in a very special way and one that is very carefully designed with a view to budgets.

That is that the subscribed capital, the authorized subscribed capital, is paid for in two different forms. One is in paid-in capital, and the other is in callable capital. In more recent years, the paid-in capital may only be 10 percent of the total capital. On average, I would say in the African Bank in the past has been 25 percent. These things have varied. The more mature the organization, the lower is the percentage of paid-in capital as compared to total capital that is required.

This paid-in capital is a drain on the budget, but the paid-in capital may be anywhere between 5 and 25 percent. In my experience, it is only 10 to 25 percent of the total capital.

The callable capital remains as part of the guarantee for the borrowing operations of the multi-lateral development agency. It is the callable capital which gives it the credibility with the private sources of capital.

Because of this callable capital, these multi-lateral development banks are able to borrow from the private sources. Yet, this callable capital is not the use of appropriated funds. I have participated in a number of these exercises, Mr. Chairman, and it is possible to get governments to give much more in the way of their willingness to subscribe to capital shares because they know that when they go to their budgets, their budgets are only going to be asked to provide a small fraction of the total, and the other becomes a very remote contingent liability.

I say remote contingent liability, because in the 40 years of operation of the World Bank and all these other regional development banks, there has not been a single case of having to call on the callable capital. The callable capital is there. It is very important to the investor in the multi-lateral institution, the one who makes loans to it. It is terribly important to know that if that institution cannot service its own debt, it will be able to turn to its shareholders and call on callable capital to provide the funds for the servicing of its debt.

But as a matter of fact, it doesn't happen because the financial policies of these institutions are very conservative. They don't borrow even as much as their callable capital. They lend money on the basis of the cost of borrowed money to the institution plus some

margin of profit. They are profitable institutions. They accumulate reserves. The reserves are invested. They become a source of money. The paid-in capital is also invested, and because the paid-in capital is invested, it becomes a source of revenue for the management and administration of the institution. One doesn't have to go back to governments to find the funds to run the institutions.

As a result of having their own funds available for management, it means that the institutions are not under pressures to lend simply for the sake of getting a revenue stream. They have revenue streams in their own investments which make them quite independent of their lending program.

So, the lending program can be done quite cautiously and deliberately without the pressure of how they are going to finance the administration unless they make loans. As I say, through paid-in capital, through reserve accumulation, they are able to accumulate enough to have the necessary income from these investment sources of funds.

Now, I think one of the other aspects, that I find from experience that may be relevant here is that the very fact of dependency on the private sources of finance acts as a discipline on the lending program of the bank and its administration. You cannot hope to have credibility with private sources of funds for a multi-lateral institution unless it is well administered, unless it is well managed, unless it has a reputation for financial probity, for management efficiency, for careful loan investigation. Your credit mechanisms in these institutions are absolutely first rate.

As someone who has been in the World Bank and in the Monetary Fund but also in First Boston Corporation and in Citicorp for many years, I can assure you that the credit mechanisms of these multi-lateral agencies are at least as good as the credit mechanisms that you find in the private sector. That, to my way of thinking, is partly due to the fact that these multi-lateral institutions have to raise their money from the private sector.

They have to portray themselves and create the credibility that can only be obtained by having a first rate management and a first rate set of financial policies and essentially conservative financial policies, because your outside investor is going to look at these institutions very carefully and is going to want to know what the rating agencies say about them.

They want to know whether Moody's thinks of them as a triple A or a double A investment or Standard and Poore's. The linchpin is the guarantee that comes from the callable capital, but the other things are very necessary to reinforce it.

So, in reading this bill, to the extent that I could say that I understood it, I would recommend a very serious review of the capitalization section. I think the project, if I understood it correctly in this bill, could achieve its purposes with much less call on the budgets of the United States, with much less budgetary strain.

I think through the device of callable capital and paid-in capital and the using of a guarantee function implicit in the callable capital or just making it explicit that the callable capital will be used to validate the obligations of the new entity, it might very well be possible to have a relatively simple capitalization and financial structure which would not be burdensome. It would be less burden-

some than this one, if I understand it correctly, and I think it would be worth exploring.

I do believe that taking as given the conditions on the Indian reservations as they have been explained to me, not being an expert, but if the conditions are unemployment, poverty, economic stagnation, the need to develop a private sector, the need to get rid of dependency on external sources of finance with economic self-reliance and all the social benefits that come from economic self-reliance and prosperity, these purposes, I believe, are being achieved through the use of these multi-lateral institutions.

Therefore, I think it is worth seriously considering whether the funding and capitalization experience of these institutions might not be useful, and I would personally endorse what this bill is trying to do. I think it should be possible to work out a technique that is financially acceptable even during a period of severe budgetary constraints.

And if I can be of any help in the future, Mr. Chairman, I would love to be. Thank you.

[Prepared statement of Mr. Friedman appears in the appendix.]

The CHAIRMAN. Thank you very much, Dr. Friedman.

In other words, you are suggesting that by this measure, we can extend the full faith and credit of the United States. We need not put up all the money in cash.

Mr. FRIEDMAN. That is right.

The CHAIRMAN. As chairman of the Foreign Operations Appropriations Subcommittee, a committee that has jurisdiction over the international financial institutions, I am aware of what you have just testified to, and I have always wondered why, if they can do it in Africa and Asia and South America, they can't do it here.

I am glad you have indicated that you are at least favorably inclined to believe that the Indians can do just as well as others in other parts of the world.

As you know, in these multi-lateral institutions, often we have what is known as the soft window. Would you consider the establishment of something similar to that in this enterprise?

Mr. FRIEDMAN. I would want to think about this hard before giving a definitive answer, but basically, I am pretty conservative in my attitude on these things. So, my first reaction is a reluctance, partly because I would guess—it is just a guess—that there are other soft windows for American Indians, that there are other places in which assistance is given to Indians in various different ways.

Now, if there isn't, if there are no grant sources, then I think you have to find one somewhere, because in all these activities, you do need someplace where you can obtain things on a grant basis rather than on the loan basis.

However, if there are other soft windows, then I think your major job in an international institution of this kind is to establish its financial credibility and its viability as a lending institution. Therefore, I think it is easier to do that at the early stages when you don't have a soft window.

Once you are established and your credibility is established and your criteria of lending are well established and your staff and your administration, et cetera, are all in place, then to take that

staff and that administration and say we are going to entrust you with a soft window, I think, is a very positive thing to do. By that time, people will feel comfortable that the criteria by which the soft window is administered are the same criteria by which the loan program is administered.

The CHAIRMAN. Based upon your experience as the World Bank and other financial institutions, in studying the measure, do you believe that the potential for success is there?

Mr. FRIEDMAN. Oh, yes, I do. I think the potential for success is there, but I would stress that from the beginning that all the time you ask the question of what kind of reputation will this institution have with private sources of finance if—and then whatever the question is—if it has this kind of administration, this kind of staff, this kind of location. In other words, use it as a bench mark. Why? Because that is the most conservative bench mark you can have. That is the highest hurdle that you have to jump over.

If you can jump over that hurdle successfully, then I think you have a very high chance of success. And I do think, however, with the experience——

I have been advisor to the African Development Bank for five years, Mr. Chairman. The African Development Bank has 50 of the poorest countries in the world. Yet, we have a triple A rating in the—I shouldn't say we anymore, because I am not with them anymore—but they have a triple A rating from Moody's, a double A rating from Standard and Poore's. They are very well regarded in financial markets.

What does that mean? That means they can do much more for the African nations. That means they can raise many more funds. They can get much more government support.

The African Development Bank is much bigger than anyone ever hoped it would be, but the basis for its expansion is this standing that it has in the financial community even though its borrowing countries are among the poorest in the world, and they don't have any other kind of borrowing countries in their portfolio.

That shows that even with borrowers a weakened credit standing, but that means, for example, that your project criteria, your credit criteria have to be pretty strong. You have to make sure that if you are making a loan to a country like Mali that that loan is very well considered, because the financial community is going to judge your whole management and your credibility by the kind of lending that you do.

As I say, if you use your financial criteria to guide you in the establishment and the functioning of the institution, I would say there is a very good chance of success.

The CHAIRMAN. I think history will record that many of these countries in Africa, though they may be very poor, have abundance in potential resources, whereas with Native American Indians, as a matter of government policy, we decided many years ago that they should be pushed west of the Mississippi. As a result, you have many of these great legends now of the Trail of Tears and the Cherokee march.

In addition, 200 years ago, they had title and sovereignty over 550 million acres of land protected by treaties of the United States and by laws of this land, but today they have something like 50

million acres and some of the worst non-arable land that one can locate in the United States.

So, I think this poses a very unique problem of poverty and economic deprivation. So, I think maybe the time has come, as you have indicated, that we do something about it. We can't return the 500 million acres of land, and I don't suppose we can have another journey east of the Mississippi. So, we will have to face reality as it is, and that is what we are trying to do, face reality and do the best we can.

To all three of you, I thank you very much for your presence here and your contribution. Your suggestions will be considered very seriously, because we want this to succeed, as you have pointed out, Dr. Friedman, as a very conservative financial institution.

We will stand in recess for five minutes. There is a vote pending, and I will have to return to the floor.

[Recess taken.]

The CHAIRMAN. Before proceeding with our final panel, I would like to make the following announcement.

I have been made aware of articles that have appeared in the Arizona Republic in recent days. The staff has begun its scrutiny and investigation. I will be recommending to the committee that a formal investigation be conducted to look into the charges set forth in these articles. I am certain those of you who have seen those articles must agree with me that these charges are extremely serious, touching upon felonies and misdemeanors.

Therefore, as chairman of this committee, I am now publicly requesting the Assistant Secretary, the Honorable Mr. Swimmer, to send a directive to all of his personnel instructing them not to destroy any documents. The investigating staff, I am certain, will want to look over these documents. Any destruction of documents will have to be dealt with accordingly.

I would like to now call upon the Honorable Alex Lunderman, the Honorable Gary Collins, the Honorable John Washakie, the Honorable Tim Fernando, and the Honorable Larry Kinley.

We are now pleased to have with us a representative group of Indian leaders from Indian country. Our first witness will be the Chairman of the Rosebud Sioux Tribe of South Dakota. Mr. Chairman.

STATEMENT OF HON. ALEX LUNDERMAN, CHAIRMAN, ROSEBUD SIOUX TRIBE, ROSEBUD, SD

Mr. LUNDERMAN. Good morning, Mr. Chairman.

I have staff people that write things up for me. Often, I really don't like to say what is written.

The CHAIRMAN. We will put in the record your staff's speech and whatever you have to say, we will be pleased to listen to you, sir.

Mr. LUNDERMAN. It is like I am to say good morning, Mr. Chairman, but that has been submitted, so I would like to speak to some issues.

I have heard the panel before us say that they really couldn't commit themselves to investing on the reservation, which is fine. We are having that difficulty all over anyway. It appears that we are in an agricultural depression or an economic slump, either

way, in the Great Plains area. I can speak to that, and it is quite difficult to get anyone interested in the Great Plains.

Personally, I look back to probably the events of 1876 coming forward to today's time. It appears that that area was the last area to oppose the U.S. Government. That is what it appears like to me.

Now, what has happened today is that I realize that the Bureau of Indian Affairs has helped the Rosebud Sioux Tribe and is attempting to help all tribes, but there is one thing that I have noticed. It is that a corporation allows lateral movement into its system so you can bring in experts. But when you have a system set up where a lateral movement is not allowed, then you will have someone sitting in an office for 41 years like we have at Rosebud.

Nothing happens because that individual's thoughts are back 41 years. That is one example.

Now, if this bill is going to establish a corporation like REA, that is why I support it fully. No one monitors the REA. They don't answer to anyone.

I approached them because the Oglala Sioux Tribe and the Rosebud Sioux Tribe formed a joint energy commission, and we asked them if they would loan us some of their funds. They said no. So, this would be an alternate source for tribes who want to venture into enterprises or business. That is why I see it as a good bill.

However, as we have heard, no one wants to invest in reservations and tribes because, number one, law enforcement is a problem. Tribal courts are always the jurisdiction. We need commercial codes developed, zoning codes. We are the last remnant, I guess, in this United States to look at. It is just like being forgotten. We are the oldest brother, but they forgot us.

We have taken some initiatives ourselves as tribes to develop such as bonding. What I heard a couple of minutes ago is that that is being opposed now. It will be another struggle for us, but we will win that one with your help and other people with that feeling and understanding of our problems.

I do speak for my tribe and the Sioux Nation, because it is very difficult to get loans. Although you have a good plan, the banks in the Midwest won't touch us. Although you have a 90 percent guaranteed loan, they won't touch you.

Granted, money is available, but how do you get at it? I will give one example of our hospital in Rosebud. It took 26 years to get that. The final document that was approved needed 27 signatures for approval, and there was a constant battle for 5 months and 26 years.

Maybe that is what is holding it up. It appears that way. But this bill, like I said, will support or create an alternate source of financing.

So, I really don't have that much to say, and I understand that. Hopefully, this committee understands our problems.

I am not here to condemn anyone or judge anyone. Maybe some advice and maybe some understanding of all of us in this room that we do need to develop.

In my term, another thing that I encourage is 4-year terms. My term is 4 years which gave me, my staff, my counsel time to develop and to establish some credibility with the help of Mr. Swim-

mer's office and his staff, but we do need an alternate source. Maybe this is a false hope, but I doubt it.

I am not a great banker. I have only promised two things in my campaign, and I have kept them. One is sober leadership and the other is truthfulness. That is what makes it very difficult, two of the hardest things to do in Indian country now.

When I hit town Tuesday, I didn't come here to support the gay rights movement, but every time I hit town it appears like something is going on and it doesn't look good for us Lakotas.

With that, I will close my remarks. I don't want to take up too much time in dialogue. I am a man of activity. I like to see things happen. In fact, I am so optimistic that I am sure things will happen. Things will move now.

Thank you very much for listening to me.

[Prepared statement of Mr. Lunderman appears in the appendix.]

The CHAIRMAN. Mr. Chairman, I can assure you that your statement is heard and will continue to be heard. I can also assure you that we on this committee, although we cannot guarantee success, will do everything possible to make certain that this enterprise will succeed. After all, we have some pride in having participated in giving birth to this venture. So, I can assure you that we will give it good odds.

Now, as for your standards of leadership of sober leadership and truthfulness, maybe you are setting the standards too high for us here. [Laughter.]

Mr. LUNDERMAN. Thank you.

The CHAIRMAN. Our next witness is the Chairman of the Arapahoe Business Council, the Honorable Gary Collins.

Mr. Collins.

STATEMENT OF HON. GARY COLLINS, CHAIRMAN, ARAPAHOE BUSINESS COUNCIL, FORT WASHAKIE, WY

Mr. COLLINS. Thank you, Mr. Chairman and members of this honorable committee. I am very pleased to be here to discuss some items with you today.

As you stated, my name is Gary Collins, and I am the Chairman of the Northern Arapahoe Tribe. With me today is one of our other councilmen, Dennis Sunrhodes, and our counsel, Tom Acevedo. They are available with me for any questions that may occur during the formal hearing or later this afternoon.

I have only prepared a brief statement here to present to you, but I am willing to respond to any questions that you may have as regards the Arapahoe's position and understanding of this draft legislation.

For your information, the Arapahoe Tribe, through counsel, in August of this year, had presented some written testimony before the House Interior Committee in Denver which was on H.R. 1759 and, of course, S. 721. We feel both of these bills are significantly interrelated with regard to capitalization in Indian country, so I will preface my comments with regard to both of those bills.

In the testimony that was submitted earlier, there are some specific items we would like to see changed and enacted into law. I

have a copy of that if you don't have one at this time. This, of course, is already part of the record.

Briefly, I will mention a couple of points that were outlined before.

The tax credits provided for in H.R. 1759 must be readily available to the potential private investor so that investment interest is stimulated. Moreover, the amount and kind of tax credits available must be of a sort that private enterprise can truly understand and can use. In addition, as was mentioned in the previous committee hearings, the inclusion of business loss deductions should be given consideration.

We believe this should serve to encourage private enterprise to consider business venture developments on reservations that may have the high risk component.

The tribe further believes that the legislation through S. 721 to achieve some modicum of success must go beyond the previous efforts of Congress as directed in the area of economic development. Therefore, the tribe urges this committee to give serious consideration to the types of incentives the private business sector has learned to live with but not in Indian country.

S. 721 should enable the tribes to participate in a vested ownership category. I believe that is where the underlying method of success lies. If the tribes were able to have some vested interest through capitalization, input of capital into some of these kinds of activities, the vested interest strictly, one should understand, would be an incentive to make this a very viable opportunity.

Currently, of course, that has happened, as Mr. Friedman mentioned earlier and Mr. Brown with regard to their testimony, the private sector is willing to look into these investments for Indian country, but with vested partnership, I think this would have the success ratio that is required.

Additionally, we need to encourage as broad a business spectrum as possible to invest on reservations. That will hopefully diversify the economic base.

We at Wind River primarily rely on our income from oil and gas ventures. Of course, as we all know, this is a finite resource. This resource, once it is gone, then our basic income stream is gone.

So, diversification certainly would be one of those things that we hope the Senate bill and the House bill would reflect with regard to their ultimate decision.

Additionally, the Arapahoe Tribe, as I am sure some other tribes are, is interested in having further legislation enacted which would create sound tribal economies and thereby, hopefully, ultimately improve the daily life for reservation residents. For those of us who live on reservations, those of us who have been raised and have spent most of our lives there, it is difficult to portray to the private sector, even the local private sector with the financial capabilities to understand that we in fact as Indian people will be on the reservations. We are not leaving. We will be there whether the economy is very good or very bad, and we are there now when the economy is very bad.

I think this is an intangible portion that the institutions with regard to financing do not recognize in full force. The tribes will always have this position where we will be there on our Reserva-

tion. There is an economy that needs to be generated and, of course, you can see all the satellite communities with regard to reservations. They do prosper on the fringes of the reservations because the economy is not on the reservation but turning those dollars over in these communities. The dollars leave the reservation. In some cases, they never make that turn-over with regard to taxation issues, sales tax, and so forth.

In conclusion, the tribe is supportive of the draft legislation but firmly believes that the incentives for business must be real enough to sufficiently attract private business investment on reservations. In some measure, both pieces of legislation under consideration by this committee are a step in the right direction of promoting development and the tribes' favorably hope that some of the goals sought should be met.

As Mr. Brown and Mr. Lunderman and Mr. Friedman have previously testified, I believe that Indian expertise is imminently available. We have some emerging kinds of things happening from my involvement with tribal government. So, we just need the catalyst. We need that extra capital to get things moving in an appropriate way.

As Mr. Swimmer mentioned earlier, there are some avenues for capitalization, but the bureaucracy, the attempt to get these things into a successful mode seems to be highly insurmountable in many cases. So, in the opinion of lots of tribal members as well as those investors in tribal entities, it just does not come to fruition.

At Wind River, we are creating our own economy. We are establishing the format through tribal codes, business codes. We are revamping our tribal court system so that we can establish a very stable business environment, government environment to seek outside investment. S. 721, in my estimation as well as that of my tribal members, would be one of those catalysts that certainly would provide the capital to create our own economy on our own reservation.

We have everything else. We have the people, the resources. We have some limited capital, but in the capitalistic society that we live in, I feel it is very important we would like to leverage in some of our money with private sector money. We all have enough of an interest to make these kinds of opportunities a success.

With that kind of an opportunity imminent, we feel it would be much to our favor in Indian country. We would not have to sell our assets to maintain tribal government. We would actually be using the cash flow of the money that is required to provide a sound economy.

With that, Mr. Chairman, I would like to conclude my comments. If you have any questions, I will certainly try to answer those.

Thank you.

The CHAIRMAN. Our next witness is the Chairman of the Lummi Business Council, the Honorable Larry Kinley.

STATEMENT OF HON. LARRY KINLEY, CHAIRMAN, LUMMI BUSINESS COUNCIL, BELLINGHAM, WA

Mr. KINLEY. Good morning, Mr. Chairman. Thank you for giving us the opportunity to come back and speak before the committee.

On a personal note, if I may, before I begin here, I would just like to express Lummi's appreciation for the aggressive posture of the Chair and the Vice Chair, Senator Evans from the State of Washington, and also the Senator from Arizona, Senator McCain, have promoted not only on this issue but, many other issues for the benefit of Native Americans as members of the Senate Select Committee. We at Lummi certain appreciate that, and unfortunately we don't get back here enough to show our appreciation. Thank you.

I have been sitting here thinking about what was said by some members of the previous panel as well as the experiences we have had at Lummi. Similar to some of the other chairmen, we are trying to figure out how we are going to make this legislation work on our reservation. Conceptually this is good legislation, it just doesn't go far enough.

A lot of the real difficulty we run into at Lummi is, who is this business community? I'm sure, the business community probably says the same thing about us, who are these Indians? What do they mean sovereignty or quasi-sovereignty, and what does all this mean. Why isn't it clear?

The reason I say that, in other forums that we participate in the Northwest, particularly in fishing, we have found that the matter of perception is so very important. A specific example was when we were dealing on the U.S. versus Washington, more commonly known as the Boldt decision, a tremendous amount of conflict was going on.

In an effort to resolve some of the conflict, in phase II which is a habitat protection, there was a decision reached that it might be better to negotiate rather than litigate that maybe we should get reasonable people to sit down and try to work it out outside of the courtroom. As a result of that, over the last few years, we have come to find out just by having people sit down and talk to each other rather than litigating or reacting to the newspaper articles that there has been a considerable movement forward due to people just getting to know each other and build a level of trust.

I guess in simple terms, more than anything else, it is a matter of risk and a matter of perception. In our case, in dealing with some of these heads of corporations we actually got to know who they are as well as they getting to know who we are. There has been a real change out in the Northwest in terms of how we deal with each other because of this.

I realize that isn't something you can legislate, but I think there is a real lesson learned there. I think education in whatever form it takes, is really important.

As you know, Mr. Chairman, we are involved with some other tribes in discussing the relationship between Indian tribes and the U.S. Government, as you pointed out in some of your earlier discussion here today, the sovereign status of Indian tribes as to really what that means, especially as a matter of perception from the members of the business community.

That is why I think the analogy of one of the previous speakers about the proven institutions that have worked in the developing third world countries and it's possible application to some of the things that we can do as Indian country evolves. That is why at

Lummi we in general principle support this type of legislation. The political insurance concept of OPIC is a good example that should be explored.

At the same time, we also recognize that is just a part of it. Of course, economic development is just a part of our greater goals of what we are trying to do within our communities. You can't do all of them without a strong tribal government, so some consideration should be given to strengthening and stabilizing tribal government.

I guess another problem that is created is when things just come from the top down. What I mean by this is that while we are very supportive and appreciative of the chairman's commitment, especially his visits to Indian country, we feel we need to go a couple of steps further and that is we create a task force of representatives from Congress, the Executive Branch, and most importantly tribal chairmen to put together a U.S. Government Indian Economic Policy with accompanying legislation to implement it.

The perception of the sovereignty problem just keeps coming up and coming up. In previous testimony we have given on Senator McCain's bill on the enterprise zones, we proposed a solution as we seen it, because as some of the previous speakers have said there as a matter of what we are really doing is trying to get past the initial barrier. We have found from personal experience, with a couple of the local banks we deal with, the matter of sovereignty is not as important as the matter of how well you know each other and trust each other.

We have had some types of loans with local banks that are strictly based on trust. There is no collateral at all. And as we all know in the business community that a lot of things are supposed to happen in a certain business way, but really the way they happen is based on personal relationships.

Our initial discussions with some of the foreign countries is based on just getting to know each other first and developing trust.

I have talked to some of the other tribes where they actually have enticed some businesses within the reservation, and they are dealing with it after considerable discussion and building up of trust.

I listened to the Chairman of the Mississippi Choctaw in a presentation and how far back he had to start before he literally got the corporations to locate on his reservation. I heard the Lagunas economic story, who are here—I am sure they are going to point out how long it took.

So much of it comes to trust and personal relationships. I hear all this other stuff about how we have to do all this other thing, and I think they are necessary, but it really gets down to people dealing with each other. I think that concept has to even go up to the relationship between Indian tribes and the U.S. Government.

Excuse me for kind of wandering off here.

The matter of the tribal government stability—I hear that coming up time and time again. If I understood Phillip Martin in one of his papers that I read, he was pointing out that that is as important as anything else, and that is how do you make a government stable. There isn't enough emphasis placed on this and I think Congress should consider this.

There are some things that can be done in terms of educating the council members or board members. I think they are very important for long-term stability.

People seem to be real hesitant to get into that area. I think that this is very important, because I keep hearing people say you have to separate politics from business. I kind of really question that, because I see the U.S. system here where they say they separate government from politics. I recognize, and I am from way out in the West, but my perception is I don't see that clear separation, but I see them asking that.

A lot of the stuff where I see the problem though is a matter of misperception and lack of understanding, and it takes time to get back to deal with some of that stuff. Like third world countries, we are going to have to have some time.

The key thing, though, is we need to be able to do it. We have to be able to participate in a process where we are coming up negotiating at all levels and it is not always ideas coming down to us saying this is how you do it or this is the way you have to change if you are going to make it in the business world.

I don't necessarily think that is completely true. I think that they can blend. I also think Indian reservations can offer something even to the business community as to how some things can work.

I see people set up these barriers where it just has to be this way. I know from personal experience as well as involvement with the tribe sitting down with some financiers as well as other businesses that once we understand each other, they are willing to take the risk. While collateral is really important, we have done some things within our reservation to literally bypass some of these things, and it was based on mutual respect and trust more than anything else.

So, I guess one of the things I think we ought to really consider is how do we get there and recognize it takes time.

I think the matter of the why tribes and where we are today, why we are where we are today is really important. Looking back in history, at one time, there were very sound economies on Indian reservations. I think we take a look at that and see why it worked for us.

Why aren't there sound economies now? I know there is paternalism and dependency, but what contributed to all that? Is the system still contributing to those types of things?

The human side is very important, that is my point, that you can't just do economic development in a vacuum. The governmental and social fabric are very intertwined.

We have done some of that at home to take a look at why we are like the way we are today.

I think the potential opportunities that reservations provide for their own memberships as well as the impacts that they can have on the surrounding communities are very important. I think some of the tribes that have done that are good examples.

I think there isn't enough Indian people that realize that though. I am fortunate enough to come back here to hear some of the speakers as to what some of the other tribes are doing, but I know a lot of tribes aren't as fortunate as we are to be able to do this so

we need a mechanism to get the word out on the successes in Indian country.

The corporation should expand investments in Indian country and not replace existing opportunities and support mechanisms, the Federal support system provides fundamental resources for financial, physical, and human development.

The corporation, and its access to short- and long-term capital, will be helpful for the tribes that are ready especially if it is done like in third world countries. The more people realize our likeness to a developing third world country the easier our economic development will be.

The matter of incentives to attract business are inportant as long as it is recognized that they are not the only solution, but are part of the larger solutions. Again the importance of dealing with stable government, sovereignty and a more comprehensive economic policy with enabling legislation is of utmost importance.

At Lummi we have a foreign trade zone, we have done our necessary business and tax codes, we have a stable tribal government, we have a pretty well trained work force. We have a community that is very work oriented. We still have some difficulty in trying to break down the barriers for business to come and invest there.

That is why we are spending a lot of our time as to why won't they. We have attended a lot of the round table discussions with the business community. We have talked to other tribes as to their successes. However, one of the things that we don't see or there is no vehicle where we could sit down and talk to people—and we addressed it in our testimony here as to the matter of what is working, why is it working, what isn't working, and why isn't it working.

We are proposing within the legislation that you consider adding some research in there as to what works and what doesn't work and why the ability to tax, I think, is significant, something that needs more discussion also. There are some Congressmen that whenever taxation comes up, there is legislation proposed that would limit the powers of the tribes. We think this needs to be addressed.

The importance of us participating more in a process can't be over emphasized.

Finally, there is the matter of how different all the tribes are, as you pointed out. Some tribes do have resources; some tribes don't. Our differences need to be recognized and addressed as well as what our relationship is to the U.S. Government, and what role do we play within the country.

With that, I thank you, Mr. Chairman.

[Prepared statement of Mr. Kinley appears in the appendix.]

The CHAIRMAN. I thank you very much, Mr. Chairman.

Our final witness is the Governor of the Laguna Pueblo, the Honorable Tim Fernando.

Governor.

STATEMENT OF HON. TIM FERNANDO, GOVERNOR, LAGUNA PUEBLO, NEW MEXICO, ACCOMPANIED BY RON SOLIMON, PRESIDENT, LAGUNA INDUSTRIES, INC.

Mr. FERNANDO. Thank you, Mr. Chairman and members of the committee. I would like to thank you for giving me this opportunity.

I am the Governor of the Pueblo Laguna. My name is Chester T. Fernando.

With me today is Ron Solimon who is the president and general manager of Laguna Industries, Incorporated which is a for-profit corporation wholly owned by the Pueblo Laguna.

For those of you who have lived on the East Coast for most of your lives and do not know where New Mexico is, it is part of the United States. Pueblo Laguna is located in the west central part of New Mexico.

We would like to apologize at this point in time for not presenting testimony in the earlier part of the year regarding S. 721, but because of other pressing business issues at the Pueblo, that is basically our excuse. I thought I would enter some excuses on the record like the BIA has.

Laguna Industries is only one of the business ventures that we would like to use in our testimony in support of S. 721 today.

Let me back up a little bit. You do have a copy of our testimony. I am not going to read it word for word. I am not a good reader, but I will just try to go through and highlight some of the comments that I have made.

Those concern the efforts that we have made in trying to bring in some kind of business venture to the Pueblo Laguna to alleviate the unemployment problem that was caused due to the closure of the uranium mine that had been in operation for 30 years. The effort was to try to get some kind of contracting type of venture onto the reservation utilizing the existing human resources we had available.

We took about 6 years to try to get some kind of something done so that it would enable the Pueblo Laguna to allow us to maybe attack the Department of Defense for possible contracting type of services, but because of the language in the regulations, the statutory and the regulatory process, Senator Domenici was very supportive of our efforts and he took the lead role in making these changes on our behalf which ultimately allowed us to enter into the world of defense contracting.

In August 1984, Laguna Industries was certified as an 8(A) corporation under section 8(A) of the Small Business Act. This was accomplished pursuant to a memorandum of understanding between the Department of Defense and the Small Business Administration.

So, this kind of demonstrates the action by tribes that I am sure is beginning to become evident throughout Indian country. However, the question is, are tribal governments willing to change?

We would like to be recognized as a tribe that is willing to change, because with this incorporation, it established a separate entity. We are separating the business from the tribal council's involvement.

It took a while to educate our council on why they can't run the day to day operations, why we had to trust Ron Solimon so he could make some hopefully good business decisions. It was a new thing for the tribe, but it has been accepted now, and we are moving forward with the progress.

The other thing that we recognized was that we knew that we needed to have some kind of sponsorship from the private sector so that we could also demonstrate to the Department of Defense that we had someone on line assisting us in the technical area. So, Raytheon Services came into play, and they provided us with some strategic planning in the marketing area. Eventually, it began to come to reality.

We immediately started to look at how we were going to pay for services, because we were aggressively such a business venture. We looked to the Department of Health and Human Services and also the Administration of Native Americans to assist us in paying for some of Raytheon's expertise with regard to the management support, the training, and the technical assistance as well as some costs for the start-up to acquire equipment of whatever type we needed in order to get our infrastructure in place.

At that time, Ms. Dorcas Hardy and Mr. Lynn Engles, Commissioner for the Administration of Native Americans, were pretty supportive, patient, and helpful.

So, with this combination of assistance, technical and financial, and also the Pueblo Laguna's commitments, facilities, human and financial resources, we impressed the Department of the Army in the Communications Electronics Command which is located in Fort Monmouth, New Jersey, and we started talking about the possibility of contracting communications shelters. That became a reality in August of 1985 to the tune of $10.4 million.

We are now manufacturing two types of communications shelters at the Pueblo Laguna, so if anybody has any problem with communications, let us know. We have plenty to give or sell. They are not set up to communicate with the Pueblo Laguna only.

Anyway, the next question was how we were going to finance the basic operation. Of course, Ron was taking the lead role at that time in trying to assist the Pueblo in trying to go elsewhere to get some funding.

Of course, we went to the banks and we went to the Bureau, but as we proceeded with the acquisition of financing, we ran into more obstacles. There were more regulations that were thrown at us. It was very discouraging on the part of the tribal government.

However, we had gone that far and we wanted to continue to pursue it and to make the contract a reality simply to try to offset our unemployment. So, the tribe had to, in order to demonstrate our continued support for this effort, cough up $1.5 million and loaned that to the industries. That is basically how we were able to succeed with the operating capital and to get the project and contract moving.

These are only some of the things that we have encountered in our attempts to try to attain the self-determination of the Pueblo Laguna to try to prevent and to reduce unemployment. This is basically our reason for supporting S. 721, because I think it will give us some lateral liberty movements in order to try to pursue other

business ventures. We are trying to expand the current operations of Laguna Industries.

One more statement before I close is that though the Bureau of Indian Affairs currently has some financial assistance programs, namely, direct loans and loan guarantee programs to assist the tribes in the development of various business ventures, usually they are not adequate or too restrictive. Technical assistance is usually not readily available through these programs.

This kind of situation often has an adverse impact on the potential economic development, because it ultimately brings in or creates frustration and discouragement on the part of the tribal governments because already the private sector, namely, the banks in most cases are reluctant to even loan any dollars to the tribes because of their lack of collateral.

So, with this in mind, I thank you, Mr. Chairman, for giving us the opportunity to present you with a few of our experiences that we have encountered. I would like to at this time turn a portion of my testimony over to Ron Solimon who will comment on the specifics of S. 721.

Again, I do thank you. I think what the tribes are looking for is a new beginning, because we don't like to be criticized for continuously looking for handouts, for taking the easy route. I think we have more pride than that, and I think that tribal members with the current trend of entering and attending college and obtaining degrees should be a demonstration to the powers of decisionmaking in the Federal Government sector that if only given the right tools to work with, the people, patience, a chance, the tribes will slowly succeed.

It is just like a newborn child. The more you criticize that child for its inability to eat properly or act properly in public, then that negative view sticks with that child and they often classify themselves as a failure. I think this needs to stop. We need a new beginning in order to achieve self-determination.

I thank you for your efforts, Senator, for your support, and for trying to eliminate and alleviate some of these problems that we face in Indian country. I would also like to commend you for having the courage to step on the Indian reservation which you did some time ago.

Thank you.

[Prepared statement of Mr. Fernando appears in the appendix.]

The CHAIRMAN. Thank you very much.

In response to some of the statements made here, I would like to advise this panel here that, as you pointed out, Mr. Chairman, there is a new beginning in this committee also. For many of us, we have felt for a long time that the solutions that have been made in Washington have often been inadequate and inappropriate for problems that are faced on the reservations.

As a result, we have gone to Indian country, met with not only Indian leaders but with men and women on the reservations to listen to their complaints and to listen to their proposed solutions to such complaints.

In response to our going out to Indian country, we have come forth with legislation. This is one of the many examples. This

measure was not made in Washington, and, as you know, the Administration does not favor it.

Yesterday, the committee unanimously reported out the amendments to the Education Act. That also was not made in Washington. It was the result of consultation with Indian leaders throughout this land.

The self-determination was not made in Washington. The amendments were developed in Indian country.

We will come forth with the Indian Health bill. That, too, was made in Indian country.

The first act of this committee was to confer with the leadership of this nation and to invite them to suggest who should be the chief of staff. Upon their recommendation, this committee, not on a partisan basis but on the basis of what the Indian people felt was correct, we appointed Alan Parker, a Chippewa-Cree.

Today, I am pleased to report that we have, as I indicated earlier, a staff highly motivated, very dedicated, made up of Indians and non-Indians who literally work seven days a week and many hours each day and, for the first time as chief of staff, an Indian. Our chief legal staff member is an Indian. And it may interest you to know that of 26 staff members, 16 are Indians.

This is to demonstrate our faith in the Indians, to suggest to you in the country that we have no misperceptions. We know and we are confident that we have men and women of talent, commitment, and dedication just waiting to be called upon to provide service in such enterprises such as this.

However, in my journeys throughout the land—and, incidentally, I have spent more time in Indian country this year than in my State of Hawaii, and that should indicate to you my commitment to the cause—in discussing this bill, several have voiced certain reservations.

One is that there is no equality among the Indian tribes and nations. There are very small tribes and large tribes. The Navajos have over 250,000, and there are tribes with less than 50.

Then you have tribes that are relatively wealthy on a per capita basis because they have all sorts of resources, whether it be timber or mineral, and others have sand.

The fear was expressed that if a board of directors were to be made up of an Indian majority and that majority was to be represented only by men and women coming from the rich and powerful tribes because they would very likely buy most of the shares, the small ones would be left out. I suppose there is some validity to that suggestion, because one thing I have noticed in Indian country is that many Indian people, because of the magnitude of their local problems, look inward and concern themselves with their own problems and very seldom concern themselves with problems of other Indian tribes.

The Yakimas are concerned about their fishermen, but much of Indian country isn't even aware of the issue. I went to the Pueblo area and the Cochitis are deeply concerned with their future from that dam, but others are not concerned.

My question to all of you is, if this organization is formed, do you believe that the board of directors made up of Indians would be sufficiently objective and dedicated so that problems would be looked

upon not on the basis of what tribe it may be or how much money they have?

I realize you can't give a straight answer, but you are the leadership.

Mr. LUNDERMAN. I can. The answer is yes in the Sioux Nation.

Mr. FERNANDO. I feel likewise. I think there can be a success so long as you have some Indian involvement and a mixture so that there can be some exchange of ideas and not just one side of a picture.

Mr. SOLIMON. Mr. Chairman, I had a number of comments that I was going to make, but in the interest of time and also because of——

The CHAIRMAN. Oh, I am sorry.

Mr. SOLIMON. That is all right, Mr. Chairman. It is really pretty much a legal analysis of the bill, but we will submit it for the record.

However, in response to your question, I think the caliber of people that are being developed now because of, for instance, our entrance into the defense contracting industry—and we were basically initiated by fire when we chose to enter into that industry. I have had my head buried in our business for 2 years, and I am sort of coming up for a breath of air and, lo and behold, there is all kinds of legislation that could have either a detrimental or a positive impact on our company.

However, I think there are people who are capable and who have been objective in other situations who can evaluate different types of projects. We have been in that situation in New Mexico. Of course, we have probably a closer group of tribes there—and that are charged with evaluating from time to time economic development proposals as they relate to one or another.

I think that objectivity is going to be there. It is really born out of management experience, at least in my case, and I am sure as in the case of Mr. Brown in the financial institution area, I am sure also that what has resulted is objectivity on his part with regard to management of a corporation such as the one that is proposed.

Mr. COLLINS. Mr. Chairman, I certainly concur with the comments made. I likewise agree that we can get some concurrence within Indian country and to be objective along these lines. As a matter of fact, I see more of this happening as time goes on. I see various kinds of expertise rising forth in all areas, resource management, business ventures, capitalistic kinds of things, legal issues.

I feel that there is a trend in Indian country of a renewed bold inter-related leadership that is going to make some hard facts a reality, and we can move forward along those lines.

So, I am encouraged by what I hear here today, but I want to relate to you that I am also encouraged by what I see in Indian country with regard to that objectivity and the effort put forth by many people similar to what you have outlined with your staff, the integrity and the real gut feeling of getting something moving and being successful.

Mr. LUNDERMAN. Mr. Chairman, just a comment. My answer was yes, and I have had a little conversation here, and we both agree that—and I am sure we all agree—that this board needs to be com-

posed of real Indians, not urban Indians. I think that would solve the problem.

The CHAIRMAN. Well, that is up to you.

Mr. LUNDERMAN. There are a lot of us out there who live traditionally, and we are honorable people today. There are a lot of us who are very well educated, and they need that opportunity.

Thank you.

Mr. KINLEY. Mr. Chairman, as in our written testimony, we try to look at it not just from the standpoint of our particular tribe but as how we understand the bigger picture. I think as long as it is real clear as to the purpose of the board, the members of the respective Indian tribes on the board are going to be looking to how they can help each other.

If anything without clear duties and the board they may go too far in assisting tribes who are not ready. That is what we have found in personal experience with our own boards at Lummi.

The CHAIRMAN. I suppose that all of you will agree that there is sufficient talent throughout the land?

Mr. SOLIMON. Yes.

Mr. COLLINS. Yes.

Mr. KINLEY. Yes.

Mr. LUNDERMAN. We are all talented, Mr. Chairman. We are great fearless leaders sitting here.

The CHAIRMAN. Well, we will do our best to have our final discussion on this measure in the committee. Hopefully, before the end of the first term of this session, we will report a measure to the full Senate asking for Senate support of this new, revolutionary concept of Indians helping themselves. That is what you have been doing all along, but it is considered revolutionary today.

With that, I would like to thank all of you for spending time with us and sharing your wisdom with us. I can assure you that it has been extremely helpful. Don't be surprised if you find your recommendations incorporated in the bill that will be reported from this committee.

The committee will stand adjourned.

[Whereupon, at 11:52 a.m., the committee recessed, to reconvene subject to the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY-INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 721, THE "INDIAN DEVELOPMENT FINANCE CORPORATION ACT".

October 15, 1987

Good morning Mr. Chairman and members of the Committee. I am pleased to be here today to present the views of the Department of the Interior on S. 721, the "Indian Development Finance Corporation Act".

On September 4, 1987 we sent the Committee a letter presenting our views on S. 721. Rather than reiterate our detailed concerns today I have attached a copy of the letter to my prepared statement. At this time I would like to discuss briefly our concerns and to be available for any questions the Committee may have.

S. 721 would establish an Indian Development Finance Corporation (Corporation) which would provide development capital to Indian businesses meeting certain criteria. The Corporation would be capitalized in part through the sale of 200,000 shares of common stock ($250 per share) and 80,000 shares of preferred stock ($500 per share). At least 60 percent of the voting common stock would be required to be owned by Indians. The maximum direct Federal investment in the Corporation's common and preferred stock would be $65 million. In addition, the Secretary of the Interior would be required to loan $35 million to the Corporation to provide initial operating funds and the Corporation would be authorized to issue $50 million in Federally guaranteed obligations.

In the case of common stock, the Federal investment could also involve the use of trust funds held by the United States on behalf of an Indian tribe

which requests the purchase of stock but the tribe in effect would be guaranteed by the Federal Government against any loss and may get its money back at any time.

Although we commend the Committee for its interest in dealing with the problems of economic development on Indian lands, we can not support this approach and therefore oppose enactment of S. 721.

In lieu of S. 721, we suggest that this Committee review the barriers to better use of existing capital on Indian reservations. S. 721 approaches the continuing problems of Indian economic development with previously tried solutions; namely, loan authority, loan guarantees, and grants. The approach contained in this bill duplicates what is already available, lends itself to the creation of an unnecessary bureaucracy, and does not address the underlying problem.

We do not believe that a new source of investment capital is the answer. What we need are more good business projects. For the past several years we have been unable to allocate all of the Bureau of Indian Affairs money available for business projects although our money is available for the greatest risk projects.

The Bureau of Indian Affairs should be working with the private sector venture capitalists who are experienced at making judgments on these kinds of investments. It is possible for tribes, through use of their own trust funds, to set up a venture capital operation and contract for management services. We and the tribes have a very difficult time recruiting experts from the private sector, particularly experts who are Indian. Certainly the same problems would apply to the proposed Corporation.

As former Co-Chairman of the President's Commission on Indian Reservation Economies, I studied the numerous obstacles to Indian economic development which confront and impede Indian attempts to succeed at economic self-sufficiency. If it were true that insufficiency of capital were the sole variable upon which self-sufficiency depends, then the already existing Indian Financing Act of 1974, loans, loan guarantees, and grants (and those previously available from the Economic Development Administration) would have remedied or overcome the obstacles to Indian economic development that all of us have identified.

We would be happy to work with the Committee to explore other avenues to attack this very serious problem in Indian country.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 4 1987

Honorable Daniel K. Inouye
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to present our views on S. 721, the "Indian Development Finance Corporation Act."

At the outset, we wish to emphasize our support for the goals of this legislation and join with you and the other members of the Committee in encouraging innovative approaches to the problems of economic development on Indian lands. However, for the reasons set forth in this report, we believe that S. 721 would not be an effective mechanism to reach these goals. Therefore, we oppose enactment of S. 721.

S. 721 would establish an Indian Development Finance Corporation (Corporation) which would be authorized to provide development capital to any Indian business enterprise which has a sound organizational structure, income in excess of operating costs, assets in excess of liabilities, and a reasonable expectation of a continuing demand for its goods and services. Each loan granted by the Corporation would be repayable in 40 years or less. In addition, S. 721 would authorize the Corporation to guarantee all or part of the principal and interest of any loan made by a private lending institution to any Indian business enterprise provided that (a) such enterprise meets the eligibility qualifications for any direct loan from the Corporation; and (b) the loan is made on terms and conditions (including interest rates) equivalent to those for direct loans from the Corporation.

In other provisions, S. 721 would authorize the Corporation to purchase up to 25 percent of the equity or ownership interest in an Indian business enterprise if it is determined that such ownership would not expose the Corporation to unreasonable business risks. When the Corporation makes any equity investments under S. 721, it would be required to supervise or participate in the management of the enterprise, where appropriate. The Corporation would also be required to encourage the development of new and existing Indian business enterprises and encourage participation in the Corporation by tribes through ownership of its equity securities.

The Corporation would be capitalized in part through the sale of 200,000 shares of common stock ($250 per share) and 80,000 shares of preferred stock ($500 per share). At least 60 percent of the voting common stock would be required to be owned by Indians. The maximum direct Federal investment (which, in the case of common stock, could also involve the use of trust funds held by the United States on behalf of an Indian tribe which requests the purchase of stock) in the Corporation's common and preferred stock would be $65 million. In addition, the Secretary of the Interior would be required to loan $35 million to the Corporation for the purpose of providing initial operating funds.

In lieu of S. 721, we suggest that this Committee may wish to review the barriers to better use of existing capital on Indian reservations. S. 721 approaches the continuing problems of Indian economic development with previously tried solutions; namely, loan authority, loan guarantees, and grants. The approach contained in this bill duplicates what is already available, lends itself to the creation of an unnecessary bureaucracy, and does not address the underlying problem.

We believe that Indian tribes do not need a new source of investment capital; instead, they need more good business projects. For the past several years we have been unable to allocate all of the Bureau of Indian Affairs (BIA) funds available for the tribal business projects although BIA funds, unlike Small Business Administration funds, are generally available for the greatest risk projects. We note that S. 721 does not identify the minimum standard for credit approval to be used by the Corporation in determining adequate projects to be funded. Therefore, the Corporation could make loans, loan guarantees, or take equity positions where tribes have weak business management, are engaged in jurisdictional disputes, have rapid turnover in leadership, have an unfavorable business climate, or possess a largely untrained or unreliable labor force. These were, in fact, the problems identified by Indian witnesses before the President's Commission on Indian Reservation Economies. It is difficult to see how the provision of capital alone will overcome these risks, even where the Corporation provides technical assistance.

We suggest to the Committee that a better approach is for the BIA to work with Indian and non-Indian private sector venture capitalists who are experienced at making judgments on these kinds of investments. It is also possible for Indian tribes, through use of their own trust funds, to set up venture capital operations and contract, if necessary, for management services.

As part of its 1983 final report, the President's Commission on Indian Reservation Economies studied the numerous obstacles which confront and impede Indian attempts to achieve economic self-sufficiency. If it were true that insufficiency of capital were the sole variable upon which self-sufficiency depends, then the loans, loan guarantees, and grants already available under the Indian Financing Act of 1974, as amended (25 U.S.C. 1451 et seq.), would have remedied or overcome the obstacles to Indian economic development identified in that 1983 report.

We are advised that the Department of Justice (Justice) has at least the following additional concerns with S. 721:

o Certain provisions in the proposed bill relating to the appointment and removal of the Corporation's Board of Directors raise constitutional problems. Specifically, Justice has determined that sections 104(b)(4)(A) and 104(b)(6) are not in accord with the Appointments Clause of the U.S. Constitution (Article II, section 2, cl. 2).

o Section 104(b)(2)(B) also provides that in making appointments to the Corporation's Board of Directors, the President shall appoint individuals who represent Indian tribes from nominations submitted by such tribes. We have been advised by Justice that the President's appointment authority of executive officers may not be limited under the Constitution in this manner and, therefore, the statute should be redrafted to indicate that such nominations and criteria are advisory.

o Justice suggests that S. 721 raises serious constitutional questions insofar as it may be construed as favoring a particular racial group contrary to the equal protection component of the Due Process Clause of the Fifth Amendment. The Department of Justice strongly disputes the contention that merely because S. 721 relates to Indian tribes and tribal members, it may be considered within the analysis of Morton v. Mancari, 417 U.S. 535 (1974).

o Finally, Justice is concerned that in addition to the above mentioned constitutional concerns, section 103(4) would give the Corporation power to sue and be sued in its corporate name and to "complain and defend" in any court of competent jurisdiction. Section 103(5) empowers the Corporation to represent itself "in all judicial, legal, and other proceedings." This provision is clearly inconsistent with the plenary authority of the Attorney General to conduct all litigation of the United States pursuant to 28 U.S.C. 516.

The enclosed appendix addresses additional concerns with S. 721.

In conclusion, we oppose enactment of S. 721 and recommend instead that the Committee work toward strengthening the existing incentives for private sector businesses to locate on Indian reservations by dealing with the barriers to better use of existing capital. We would be pleased to work with the Committee staff in determining how such private sector opportunities can be best enhanced.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Ross O. Swimmer

ASSISTANT SECRETARY

Enclosure

Department of the Interior
Additional Concerns with S. 721

1. It is unclear whether the Indian Development Finance Corporation (Corporation) to be established by section 101 is to function as a finance corporation (in which only hard loans are made) or a true development bank (in which soft loans are made as well). S. 721 appears to contain provisions appropriate for both types of institutions.

2. S. 721 places almost all the risk of Corporation operations on the Federal Government. For example, the United States Treasury would fully guarantee all stock and bond purchases. Greater Indian commitment to the success of individual projects could be promoted if at least some of the risk is placed on the Indian beneficiaries.

3. Neither the functions of the Corporation nor the description of the business activities to be assisted indicate whether such activities must be on or near the reservations or have employment or other specific socio-economic impacts on the reservations. Moreover, there is no requirement that private sources for capital be exhausted as a prerequisite for Corporation assistance.

   The benefits accorded by S. 721 would seem to apply to any Indian business enterprise with a primary place of business on a reservation, engaged in profit-making activities anywhere. Profitability appears to be a key, if not the prime criterion for Corporation assistance. The federally assisted Corporation would apparently be free to compete with banks and other private sources for capital in order to invest in profitable enterprises which could otherwise succeed without government subsidy.

4. Section 102(b)(4) would permit the proceeds of loans from the Corporation to be passed on to the borrowers' members or stockholders under rules to be established later by the Corporation. We are concerned there is no requirement that such a pass-through be (a) in fulfillment of the purposes of the loan; or (b) not to recipients who would otherwise be ineligible (i.e., non-Indians whose only connection with an activity would be ownership of a share of the borrower's stock).

5. Section 103(14) would allow the Corporation ". . .to make such investments as may be authorized by the Board of Directors of the Corporation." Given the public nature of the Corporation, a more restricted and secure scope of investment would be appropriate, rather than to leave the matter to the unrestricted discretion of the Board of Directors.

6. Section 106, the conflict of interest provisions, does not prohibit a director, officer or employee from participating in any transaction or decision from which they can obtain direct or indirect financial gain.

7. Section 108 would provide extensive tax benefits for the Corporation and its bonds, notes, and other evidences of indebtedness. These benefits would be accorded in addition to other favorable Federal subsidies and in addition to the Corporation's ability to engage in any transaction deemed to be profitable, whether on Indian reservations or elsewhere, and in competition with firms, including Indian firms, which do not have such benefits.

8. Under section 201, relating to issuance of stock, the Corporation is to offer 100,000 shares of stock for tribal purchase. If a tribe purchases any stock, the Secretary is to purchase a matching amount for the benefit of the tribe from Federal funds. A tribe may instruct the Secretary to accomplish the purchase of shares by the tribe by using tribal trust funds (apparently with no Secretarial discretion in the matter). The tribe may then instruct the Secretary to sell any shares purchased from trust funds, with the Federal Government providing any funds necessary to make up any difference between the sales price and the face value of the stock purchased with trust funds. Receipts are apparently placed back into trust. We are concerned that Federal funds for the "second sale" would constitute an interest-free loan from the Treasury to the Corporation (not the tribe). In addition, it is not clear from S. 721 that the Secretary's sale must be to another Indian tribe.

9. Section 201(b)(2) would permit the Corporation to ". . .issue shares of stock in such classes having such rights and privileges as the bylaws shall prescribe." Stock termed as "common" and "preferred" is referenced at various points in the bill. However, inadequate detail is provided in S. 721 on the rights and privileges associated with different stock classes. By comparison, the corporation laws of most States as well as the Model Business Corporation Act specify stock

classes and associated rights and privileges in considerable detail. We believe the amount of Federal funds involved under S. 721 requires a level of oversight at least similar to what most States have required for corporations involving no State funds.

We are concerned that S. 721 makes no provision for stock subscription requirements, payment for shares, stock rights and options, fractional shares, shareholders preemptive rights, if any, voting of shares and rights of dissenting shareholders.

We also believe that legislation such as S. 721 should specify in detail the rights of each stock class to the assets of the Corporation. Section 201(d) authorizes issuance of preferred stock and subsection (d)(4) states that such stock has ". . .a right of first preference to the assets of the Corporation over all other stock issued by the Corporation." This could mean first preference upon liquidation, but there is no provision which gives this section meaning without further definition as to when the right is vested. Under S. 721 it is not clear that Corporation debts to the United States would be subordinated to preferred stock rights. Typically, preferred stock might have preference to payment of dividends, cumulative dividends, or conversion into other classes of stock, but the bill does not either allow or disallow these or other possible preferences.

S. 721 would require the Federal Government to make a considerable investment in the Corporation through stock purchases and loans. The bill is silent on whether or in what manner appropriated funds being managed by the Corporation under section 201 as well as Title II in general would be considered as assets of the Corporation. For instance, would Federal contributions or loans, as such, be available for distribution to stockholders or for use in calculating availability of capital surplus for declaration of dividends?

We also have the following minor technical and editorial comments:

- Section 2(a)(5) does not reflect an additional key reason why previous efforts of the Federal Government directed at stimulating Indian economic development have fallen far short of their objectives. Specifically, past Federal assistance has not been made sufficiently contingent on a local Indian commitment for the successful use of development funds.

- Section 3(a)(5), limiting the term "Indian business enterprise" to any commercial, industrial, or business activity which is operated for profit, could be unnecessarily restrictive. Some non-profit organizations could make a significant contribution to Indian economic development and have an even greater ability to pay back a loan than some for-profit organizations.

- Section 102(b)(1)(A), relating to the functions of the Corporation, the Corporation should require an Indian business enterprise to present at least some collateral as a condition for the issuance of any loan.

- Section 103(12), the word "disbursed" should read "dispersed".

- Section 104, relating to the establishment of the Corporation Board of Directors. Given that the United States would assume most of the risks resulting from the Corporation's loan and guarantee activities, the configuration of Federal/Indian representatives on the Board would more appropriately be four/three rather than one/six.

- Section 201(b)(1), because of the degree of risks assumed by the United States, the percentage of voting common stock which is required to be held by Indian tribes should not exceed 50 percent.

INDIAN DEVELOPMENT FINANCE CORPORATION ACT

S.721

STATEMENT OF

ROBERT BENNETT

SENIOR VICE PRESIDENT
DAIWA SECURITIES AMERICA INC.

BEFORE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

OCTOBER 15, 1987

Mr. Chairman and members of the Select Committee on Indian Affairs, my name is Robert Bennett. I am a Senior Vice President of Daiwa Securities America, Inc., investment bankers, underwriters, brokers and dealers.

I am pleased to be here today in response to the Committee's invitation to comment on S.721, the "Indian Development Finance Corporation Act." Before doing so I think it would be appropriate to describe my firm's and my credentials, and also to tell you why we welcome this opportunity to lend our assistance to the Committee and our support to this important piece of legislation.

BACKGROUND

Daiwa Securities America (DSA) is a wholly-owned subsidiary of Daiwa Securities Ltd., a large publicly-owned Japanese securities firm. Our parent is one of the world's leading investment bankers and securities dealers operating in capital markets throughout the free world. A copy of Daiwa Securities Ltd.'s most recent Annual Report is appended to this statement. Daiwa Securities America, headquartered in New York, was honored to be named as a Primary Dealer to the Federal Reserve last December. As such, we, together with 40 other government bond dealers play an important role in the Federal Reserve System's Open Market Activities and perhaps more significant to this Committee, the financings for the U.S. Treasury. In addition, we are active in such typical investment banking activities as the development and distribution of fixed income (debt) and equity securities in the United States, Canada, and Latin America.

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Prior to joining DSA ind January, 1987, I had a long career in government and corporate finance - domestic and overseas as well as investment banking. More recently I served as chief operating officer and before as chief financial officer respectively of two United States government-sponsored financial institutions, the National Corporation for Housing Partnerships (NCHP) and the Federal National Mortgage Association (Fannie Mae).

THE INDIAN DEVELOPMENT FINANCE CORPORATION: IS THERE A NEED?

We believe that the answer to this question is yes. Furthermore, should the suggestions which are stated below be incorporated in the legislation, many of the objections of the Administration may be satisfied and the cost to the U.S. Government and the American taxpayer held to a minimum.

In making this assertion, we are persuaded by our work with the Navajo Nation in its efforts to solve problems of Tribal economic development in the course of visits, conferences, interviews, etc. attended by certain of my colleagues. For my part, a careful review of the compendium of papers re "An American Indian Development Finance Institution" submitted to this Committee in April, 1986, supports our conclusion and spells out the complex issues surrounding the development and financing of Indian business enterprises. Clearly capital is inaccessible at best. Also, we believe that money, whatever the source, is not enough. The Indian business enterprise may best flourish in its formative stage as a joint venture with an established private sector business. In addition, it will require

hands-on efforts of the Indian Development Finance Corporation (IDFC) in assisting with organizing, feasibility studies, marketing plans, management training, and oversight to protect loans, contingent liabilities incurred, and equity investment of IDFC. In short, IDFC will serve at least during the formative period prior to each enterprise's profitibability as a partner of the Indian entrepreneur.

COMMENTS AND RECOMMENDED CHANGES TO S.721

(a) In general the Bill presents a workable form for fulfilling the purpose of the Corporation. However, we believe that IDFC should be directed to provide a fair return to its shareholders in the form of cash dividends. Such distributions should be authorized by its Board of Directors consistent with the Corporation's finance condition, profitability and need for retained earnings.

(b) The Bill should provide long-range goal of eliminating Federal ownership of the Corporation's common and preferred stock and the transition of the IDFC from a "mixed" to a private, shareholder-owned corporation with a public purpose.

(c) Emphasis of IDFC's guarantor function should be added to the Bill. The success of the Federal National Mortgage and the Federal Home Loan Mortgage Corporation with guaranteeing packages of loans made by other lenders to eligible borrowers has been notable. Utilization of such a mechanism will insure opportunity for non-Indian lenders in Tribal development financing

business and reduce concentration of investment risk to IDFC. As the Corporation progresses and gains financial strength, the Corporation's guarantee program should eclipse the Federal guarantees discussed below.

(d) The provision in Section 108(b) for income tax exemption of interest and principal on the bonds, notes, or other indebtedness of the Corporation is undesirable. By eliminating the tax exemption the market for the Corporation's debt securities will be broader. Borrowing costs because of the Government sponsorship and guarantees on the Corporation's debt securities will be below general market rates and often at levels on slightly higher than the tax exempt market. In addition, such elimination would be consistent with the U.S. Treasury's efforts to restrict tax exempt borrowing to the States, their subdivisions and municipalities.

The exemption of IDFC from corporate income taxes is questionable in view of the other elements of support which are to be provided by the Federal Government i.e. equity investments, guarantee of IDFC's obligations, and seed money, loans, etc. We would suggest that this exemption be limited to the period which the Government retains an investment in IDFC.

(e) The modification of certain of the restrictions on common stock ownership would better position the Corporation for marketing its equity. These include the requirements that 60% of voting stock outstanding be owned by Indian tribes and the limitation on individual ownership of a maximum of 5% of total value of all outstanding voting common stock. It would be preferable to eliminate the 60% requirement and change the 5% limitation to 10% of outstanding shares of voting common stock.

Fixing the purchase price of both the common and preferred stock at levels of $250 per share and $500 per share respectively exceeds what is customary for newly issued equity securities. Rather we think that the Corporation should be capitalized with 1,000,000 shares initially sold at $50 per share and 400,000 shares of preferred stock at a price of $100 per share, thus enhancing their investor appeal and marketability.

(f) The borrowing authority has limits which are both too high and too low. In the case Section 202(a)(2) a leverage factor of 10 is excessive. A more customary relationship for a development finance corporation between its obligations and its net worth would be a factor of 3-4. Contingent liabilities such as guarantees should be excluded from this limitation. A borrowing of $50 million as set forth in Section 202(b)(2) on the other hand would be restrictive for a corporation with a projected $95 million of equity. It is hard to visualize IDFC having a major impact in Indian development investment with a $50 million borrowing limitation.

(g) In terms of investment authority outlined in Section 102 we suggest that the Corporation be prohibited from making loans which at issuance are longer than twenty-five years. The forty-year maximum in the Bill is more appropriate for infrastructure loans than for business/commercial loans.

The requirements that loans repayable in more than five years be amortized should be eliminated. To include such a requirement would restrict IDFC's ability to utilize bullet loans and convertible debentures.

The proposed 25% limitation on individual equity investments could tie the Corporation's hands in such circumstances as bankruptcy, establishment of voting trusts, converting convertible debentures to equity, ownership of preferred, etc. We suggest this limitation be incorporated as a non-binding investment policy.

(h) The provision requiring Indian business enterprises to have minimal common stock ownership should be eliminated. As a substitute the provision for stock purchase as part of any transaction with IDFC modified, so that any organization will be required to purchase shares in an amount equal to a small percentage of the value of the transaction say 1% to 5% as determined by IDFC Board of Directors.

(i) The proposed composition of the Board does not fairly represent each investor group. In view of the stake of the Government in IDFC one seat is inadequate. The investment of the Indian Tribes does not justify six of eleven voting seats. Allocations should be worked out so that the Government and non-Indian investors are more equitably represented.

I wish to thank the Chairman and the Committee members for this opportunity to be present this morning. Also, I wish to affirm Daiwa's interest and intent to do business with American Indian tribes to our mutual economic benefit and to endorse all efforts by the Senate and the Congress which will assist the development of Indian business enterprises. I would be pleased to answer questions or provide any additional information.

SENATE SELECT COMMITTEE

ON INDIAN AFFAIRS

OCTOBER 15, 1987

Irving S. Friedman

Mr. Chairman:

I am Dr. Irving S. Friedman, Chairman of the Board of Washington Capitol Markets Group.

I am honored and pleased to express some thoughts on S. 721.

I must emphasize at the beginning that I am not an expert on Indian affairs. The existence of widespread poverty and unemployment with its consequent social ills is, however, a familiar picture to those of us who have experience with third world countries. I presume that you wish me to give testimony based on my experience with third world countries and the efforts over the last 40 years to help them improve their economic and social conditions.

My own experience has been mostly with the International Monetary Fund and World Bank (28 years) at the most senior staff levels in both institutions, followed by about 12 years of experience at Citibank and then the First Boston Corporation, an investment bank in New York. (I am attaching a C.V.) At Citibank, I was a Senior Vice President and Senior Advisor for International Operations and at First Boston, I was Senior International- Adviser. In addition, I have served as a

consultant to the Inter-American Development Bank and the Nordic Investment Bank, and Senior Adviser to the Presidents of the Asian and African Development Banks. I have been and still am now a Visiting Professor at the University of Virginian and Fordham University. My own private firm, the Washington Capital Markets Group, promotes the role of the private sectors in developing countries by the application by them of modern technology to conditions in their countries.

I will, of course, not try to summarize the activities of these multilateral institutions, However, it may be useful to you if I were to state briefly some guidelines or lessons I have learned which may be applicable to your deliberations on S. 721.

(1) The multilateral development banks have been very successful in assisting the poorer nations of the world to cope with their grave economic and social problems. Many criticisms have been made of their activities. Among them have been insufficient attention to the environment and overemphasis on relations with governments rather than private firms. In early years, there were charges of neglect of social conditions and needs like eduction, health, urbanization and rapid population growth. These criticisms resulted in changes and improvements. The total record of these multilateral institutions is overwhelmingly clear -- the Third World has greatly benefitted and wishes to continue to have the international support of the kind given of these institutions.

The interest shown in the recent initiative of the Secretary of the Treasury, Mr. Banker, attests to the eagerness of countries to continue the activities of the multilateral development banks and the IMF, though with important changes in policies and practices.

(2) These development institutions have greatly profited from their permanence. The fact that they are established as permanent institutions with the ability to adapt their policies and practices within broad guidelines given by their charters have been major elements of strength. If I understand S. 721 correctly, establishing the new corporation as a permanent entity, I heartily endorse this.

(3) These institutions have benefitted from the fact that their ownership consists of borrowing nations as well as creditor nations. I see this principle applied in your bill here. This characteristic makes the administration of these institutions complex and often difficulty, but it is a key to their success. They achieve the loyal support of both borrowers and creditors. They facilitate sound financial management and the acceptance of the principle and practice of full and prompt servicing of loans made by these institutions is what we have called their "preferred creditor position."

(4) The multilateral development banks have also benefitted

from having their responsibilities and authority to fulfill these responsibilities clearly delineated. These banks have evolved and changed with remarkably little controversy regarding their authority. WIth membership in the African bank of 75 countries (50 from Africa and 25 from outside Africa) and over 150 nations in the World Bank, this absence of controversy over responsibility and authority is remarkable. Indeed, the world has come to take them for granted. This success, I believe, is also partly due to the provision for orderly review and change in their charters, if needed. These features appear present in S. 721 and can be expected to have similar salutary effects.

(5) The multilateral development banks also have had the advantage of being endowed with assured resources that have enabled them to operate on a multi-annual basis. They have not had to synchronize their lending commitment to annual budgets. Each project receives the attention it requires without decisive concerns about the length of time required to do well the job of evaluations. Closely related has been the availability of sources of revenues in the early years of operations enabling the institutions to get well started without excessive pressures to start lending prematurely, that is before adequate preparations had been made. Again as I understand, provision is made to have this benefit in S. 721.

(6) The multilateral development banks, as you know, have emphasized with relations with governments. Their lending has

been to governments, state, enterprises or firms obtaining government guarantees. The International Finance Corporation was created to offset this deficiency. At present, the multilateral development banks are giving much more attention to the private sectors of their members.

The African Development Bank, for example, is preparing to make this new are of operations a central preoccupation. I believe that experience endorses warmly the trust of S. 721 in giving major attention to developing the efficiency of the private sectors.

It will take much effort to identify firms, managers, technical needs and so forth. Such efforts, however, can bring about the transformation from prolonged and endless dependency on outside aid to self reliance, higher living standards and employment-creating growth. Developing countries in all regions are moving in this direction, although it requires major changes in governmental institutions, policies, and practices. So-called "privatization" has a long way to go and involves much more change than some of its advocates seem to appreciate. This marked change in fundamental policies is, however, warranted by the need to move away from inadequate rates of growth, economic diversification and self-reliance.

The contributions which is the multilateral development banks made to providing the essential infrastructure make

possible the new emphasis on productive private enterprise. The management of the proposed Indian Development Finance Corporation will have the advantage of operating within the United States with its extraordinary access to capital, management, technology and training, without the concerns for external balance of payments which are part of the very existence of a developing country.

(7) S. 721 gives the new entity of authority to engage in a wide variety of financial operations, I believe this is desirable though the multilateral development banks have often not used the authority given, especially with respect to the use of guarantees. However, as conditions in financial markets and capabilities of management change, forms of lending change. We are now seeing extraordinary changes in credit and capital markets. It is preferable, as I see it, for institutions to have the authority to change as long as their overall management is competent and well monitored. Internationally, at least, charter revisions are strenuous and, if frequently required, can lead to excessive rigidity.

(8) As for the funding provisions of S. 721, I will avoid commenting on its details as much relates to US fiscal and other governmental practices and policies. Instead, I will try to give briefly some views based on the experience of the multilateral development banks which may help you and others in assessing and, perhaps amending, some of the provisions now set

forth in the bill.

(a) A multilateral development bank is essentially and intermediary between private sources of funds or capital markets and Third World borrowers from the development institution. The use of funds appropriated from budgets is kept small. The capital structure of the multilateral development bank achieves this aim by permitting countries to purchase shares with a combination of paid-in and callable capital. The paid-in capital is a small portion of the combination, the largest portion being callable. The paid-in capital requires funds from the budget, but the callable capital is only called when there is a need to meet the obligations of the multilateral development bank itself. In effect, it is a remote contingent liability. In the last 40 years, there has never been a call on callable capital by the World Bank or by any of the regional development banks. However, the fact that callable capital can be called if needed to meet the obligations of the development banks results in their being able to borrow very large sums from private sources on very favorable terms. It is these private funds which are on-lent to Third world borrowers. This is why these institutions can have relatively large lending programs with relatively small funds appropriated from budgets. This mechanism makes it possible for countries with very cautious fiscal policies to support large increases in the capital of the development banks.

In the existing multilateral institutions, all member

countries purchase shares of authorized capital and pay for them in the dual form just described. Voting power is based on share holding. Such practices could be modified. In the International Development Association of the World Bank, for example, there is a sharp distinction drawn between Part I creditor countries of Part II recipient countries, but all countries which participated have Executive Board members.

thus, the role of the creditor country is primarily to provide a small percentage of total capital in the form of paid-in (or paid up) capital. Such paid-in capital need not be used to fund the lending operations of the development bank, but can be used to fund the lending operations of the development bank, but can be invested and become a source of revenue to the development bank used for operating expense. The availability of this source of revenue enables the bank to pursue more careful loan programs and otherwise strengthen its administration.

(b) The ability to the development bank to borrow is related primarily to its callable capital, combined with its financial managements and policies.

(c) The loan portfolio of the development bank is of also of importance in its ability to borrow in private capital markets on reasonable, market-related terms.

(d) The multilateral development banks have been able

to borrow on terms available only to the strongest borrowers, often very close to the terms obtained by the United States Treasury. They received very high ratings from the leading rating agencies.

(e) The financial standing of these banks is helped by having a preferred creditor position with their borrowers. This offset to some extent the inherent credit weakness on its borrowers.

(f) The financial policies of the multilateral banks are conservative. Borrowing by the multilateral banks is limited to capital and reserves. Leverage in the ordinary commercial bank sense does not exist, but the development bank can borrow a substantial multiple of the paid-in capital. Financial policies also usually provide for interest rates on a bank's loans above the cost of borrowed funds to it and for building reserves from net revenues. In addition, the use of borrowed funds is very closely monitored.

(g) The experience of the multilateral development banks with funding is well known, especially the experience of the World Bank of the Inter-American Development Bank. The African Development Bank is less well known, but tin many respects its experience may also be relevant for considerations of S. 721. Its borrowers are African governments and other African entities. Its membership is two-thirds African and its

capital is two-thirds African. All members, including the African borrowing countries provide the collective guarantee of the Bank's obligations. Most of these African nations have weak credit standing in private capital markets. Yet, the African Bank has a AAA rating from Moody's and a AA rating from Standard and Poor's. It has borrowed successfully in the major capital markets including Japan, the United Kingdom, Germany and Switzerland an in various currencies on attractive terms. The African Bank has never defaulted on its obligations and has never called on members to provide callable capital. The prospects are that it is most unlikely that it ever will do so. It has been only a minor, even trivial, drain on national budgets of the creditor nations. The United States provides much less than 10% of the capital. The essence of its success is in its limiting borrowing to capital,cautious, sound financial policies, its preferred creditor position, and its record for promptly and full servicing of its own financial obligations.

The multilateral development banks also have had the beneficial impact of their loans being guaranteed by governments of the borrowing entity. It its origins, the WOrld Bank's IFS was regarded as perhaps being more of a risk-taker because its loans were not guaranteed. In practice, if the funding of the proposed Indian development bank is more akin to the funding of the multilateral banks, it may be desirable to have some features to assure that the lending problems and practices meet professional standards in the banking industry.

(9)In light of this experience, I would judge that the proposed Indian Development financial Corporation could be funded with much less strain on the US budget. The new corporation would look to private sources of finance to make possible its own loan operations and to the US government guarantees to obtain the needed financial standing to borrow at reasonable financial terms. Loans made at a small margin above costs of funds would still be economically cheap and attractive for productive use by private firms.

(10) Too often the total capitalization of a multilateral development bank is seen as equivalent to official assistance or other budgetary expenditures. This exaggerates greatly the budgetary impact. Development banks can be well capitalized by seeing them as intermediaries with private capital markets making full use of the guarantees of its borrowings, limiting its borrowings to such guarantees and proceeding cautiously in its borrowing operations to assure that its funding will be successful at acceptable cost.

In conclusion, may I say that S. 721 seems a desirable attack on the underlying causes of poverty, unemployment and _____. I would highly recommend a reconsideration of the _____ Capitalization. Useful suggestions for change may well be found in the experience of the multilateral dependent banks. If I can help, I would be glad to assist in reviewing

these aspects of the hill.

Mr. Chairman, I hope these remarks are of some use to you and your Committee.

Thank you.

TESTIMONY OF ALEX LUNDERMAN, PRESIDENT
ROSEBUD SIOUX TRIBE
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

October 15, 1987

Good morning, Mr. Chairman. My name is Alex Lunderman and I am the duly elected President of the Rosebud Sioux Tribe. On behalf of myself and our tribal council, I thank you for this opportunity to present testimony on S. 721.

The Rosebud Tribe is in strong support of Senate bill 721, which presents a new and unique approach to solving some of the economic development problems on our reservation. Being located in remote, rural South Dakota, the Rosebud Tribe has experienced extreme difficulties in encouraging industry and outside investors to take an active interest in our community. Because the tribe lacks minerals, timber and other revenue generating resources, we have very little flexible money of our own with which to initiate business development. We also have had little, to no success, in working with banks and other lending institutions to generate the type of investment capital necessary to begin development ourselves. Given this track record, we take issue with Mr. Swimmer's statement that investment capital is readily available to Indian tribes.

We have, for example, been working for a little over four years to try to locate sufficient funds to dam the Little White River on our reservation. While this project requires a substantial amount of development capital, somewhere between $15 and $20 million, its potential return is equally large.

We have had little more success with smaller projects. For example, we have been searching for the past three years for investment capital to start a vegetable canning factory in our community. In so doing, we have approached the U.S. Department of Agriculture, the Bureau of Indian Affairs, the Department of Commerce, two private banks, and the U.S. Congress, all to no avail.

Experience has taught us that private banks and other lending institutions are extremely reluctant to deal with Indian tribes. They fear our lack of experience and they especially fear our sovereign immunity which they do not understand. As a result, those financial institutions who are even willing to consider the possibility of funding tribal projects require such a high profit projection as to make the loans unobtainable.

Let me make clear that the Rosebud Tribe fully appreciates the difference between federal entitlement grants and business development capital. We have no problem putting together financial projections, loan applications and other background materials traditionally requested by lenders. We do, however, have a problem preparing such documents for institutions who have already decided

that they are not interested in lending to the Rosebud Sioux Tribe at a reasonable rate.

We, at Rosebud, also understand the concerns raised by private industry about our political stability, sovereign immunity and ability to produce at contract standards. To address these concerns Rosebud is currently in the process of developing a Uniform Commercial Code and other tribal laws which will begin to separate politics from business and allow us to negotiate solutions to these and other problems. At the same time, we truly believe that there is an underlying reluctance on the part of private industry to do business on remote Indian reservations. While other Indian tribes have successfully solicited industrial clients to their reservation, based on their proximity to urban or manufacturing centers, our location remains of a very real handicap. We, therefore, feel that if we are ever going to create industrial development opportunities in our community we must increase our own access to development capital, and we see S. 721 as a step toward achieving this goal.

The Rosebud Tribe has great faith in the professional capabilities of Indian people. We, therefore, feel that an investment bank managed by tribal leaders will be capable of making sound business and financial decisions. Anyone looking at the present day economy of this country will easily recognize the benefits provided to businesses which have a voice in the financial institutions they work with. I personally, feel so strongly about this, that I will encourage the Rosebud tribal council to study closely, the possibility of investing in the Indian Development Finance Corporation, should this proposal be enacted into law.

At the same time, I would ask this Committee to realize, the financial limitations of the Rosebud Tribe and other tribal governments. I would, therefore, encourage you, to consider increasing the federal contribution to this entity. After studying the match provisions of the proposed draft, we at Rosebud feel that the federal contribution currently proposed is too low, and that it will make it difficult to adequately capitalize such a venture. We would, therefore, propose that this Committee consider increasing the federal contribution while still maintaining reasonable buy-in opportunities for Indian tribes. We would further recommend that such buy-in options range in cost between $50,000-$150,000, and be structured in such a way as to allow tribes to increase their financial contribution as their sources of private revenue expand. By so doing, you will assure the financial viability of this development corporation, while still providing Indian tribes with the option of owning stock in this important entity.

Before closing, I would like to raise one additional concern. In section 103(4), we would recommend that language be added to specifically include tribal courts as courts of competent jurisdiction for resolving disputes between the development corporation and tribal governments. In a series of recent cases, the United States Supreme

Court has held that tribal courts are, in fact, the appropriate form for resolving disputes between private businesses and Indian tribes. The addition of such language, would clarify the Committee's intent to support such a policy, while still leaving tribes the option of litigating such disputes in a federal or state form.

In closing let me state that I am optimistic that, by combining the provisions of S. 721 with the capabilities of our Indian leadership, true economic development can be initiated on Indian reservations throughout the United States.

I thank the Committee for its time and consideration of this testimony, and I would be pleased to answer any questions which the Committee might have.

ALEX J. LUNDERMAN
President

VERNON "IKE" SCHMIDT
Vice-President

Rosebud Sioux Tribe
ROSEBUD INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA 57570
Incorporated Under Act of June 18, 1934, 48 Stat - 984
PHONE 605-747-2381 — P.O. BOX 430

SHARON L. BURNETTE
Secretary

CHARLES WHITE PIPE, JR.
Treasurer

September 16, 1987

The President
The White House
Washington, D.C. 20500

Dear Mr. President,

On January 14, 1983 the White House Press Secretary released a summary of your Indian Policy Statements, which emphasized the administrations committment to remove obstacles that have crippling effects toward tribal government successes. Traditionally, Presidents have outlined numerous alternatives as solutions to improving the social and economic characteristics among the tribes.

Your Policy Statement provided optimism on a mutual issue since the statement affirmed the Federal-Indian relationship and called upon Congress to repeal House Concurrent Resolution 108. That Press Release is now four years old and House Concurrent Resolution 108 continues to create a lingering threat and the apprehension that you, as President, may not honor the unique committment in the future. The uncertainty of the President's major policy will not encourage and strengthen Tribal Governments until the threat of termination is withdrawn.

Therefore, please be advised Mr. President, that the Rosebud Sioux Tribe characterizes the four year delay as unreasonable and discredits your committment to remove obstacles that effect Tribal Governments.

Respectfully Submitted,

Alex J. Lunderman

Alex J. Lunderman, President
Rosebud Sioux Tribe

cc: Donald Hodel
Ross Swimmer
Hazel Elbert

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EDWARD L. JONES
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RANDY J. KINLEY
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Councilman

TESTIMONY OF LARRY G. KINLEY,
CHAIRMAN, LUMMI INDIAN BUSINESS COUNCIL
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
ON
S. 721, "INDIAN DEVELOPMENT FINANCE CORPORATION ACT"

October 15, 1987

Mr. Chairman and members of the Senate Select Committee on Indian Affairs. I appreciate the opportunity to appear before this Committee as Chairman of the Lummi Indian Business Council to present our views on S. 721, "The Indian Development Finance Corporation Act."

In principal, we support the concept of an Indian Development Finance Corporation to improve Tribal and individual Indian entrepreneur access to long-term development capital and short-term commercial credit. The sovereign status of Indian Tribal governments certainly impedes Tribal access to private capital and inhibits private enterprise from investing in Indian Country. And, current Federal opportunities for direct loans and loan guarantees are replete with bureaucratic obstacles.

TRIBAL ECONOMIC DEVELOPMENT IS ESSENTIAL FOR TRIBAL GOVERNMENT STABILITY

The stability of Tribal governments and their capacity to independently manage their affairs will depend primarily

on successful economic development initiatives in the near future. The comparison of this Indian Development Finance Corporation to international banking institutions is appropriate in considering American Indian Tribes as analogous to Third World Developing Countries for we are sovereign nations within the boundaries of the United States reliant on the financial assistance from the industrialized world. The analogy does not translate in terms of participation in the decision-making processes as owners of corporate shares of the institution. And, the American Indian Development Finance Corporation is not an independent institution co-owned by the United States and Tribal governments.

Historically, Indian Nations throughout North America had healthy societies with strong economies for thousands of years before the existence of the United States of America. The Lummi Nation, like so many of its neighbors, fed, clothed, and housed its own people and we had no poverty. We traded with our nearby neighbors using products our people produced in excess to their needs. Indeed, the Lummi Nation demonstrated its economic versatility by trading with nations in Asia, across North America and among the nations of the Pacific. We required no hand-outs and we asked for none. Our Lummi society was whole and complete.

This began to change slowly at first when our nation began to trade with the British, French and the United States of America in the early 1800's. Our subsistence and trade economy received a

strong boost when European and American traders came among us. New items of trade were introduced. Equity in trade and balance in economies increased wealth among our people and further enriched the region.

The Treaty of Point Elliott in 1855 was a turning point for the Lummi economy from productive self-sustaining to an unproductive economy dependent on the U.S. economic system. American currency, the final means of exchange for our labor and our raw materials, had no value directly among Lummi. American money was only good for buying goods and services from the U.S. economy. Dependence on U.S. currency, goods and services, marked the point of total Lummi economic collapse. Our self-sustaining economic and trade system had been completely replaced by a market economy which mainly benefited the U.S. economy. The Lummi Indian Reservation economy has served as an "economic sieve" as dollars have flowed through the reservation into the U.S. economy.

This "financial sieve" situation has began to change in recent years as Tribal government business development initiatives have proven successful. As Tribal major ventures become profitable, we expect support industries to develop serving the industrial base or the resident population. I agree with Dennis R. Gibb, Vice President of Bear Stearns & Company who observed before this Committee in April of this year that: "Due to the geographic isolation of most Indian reservations, and the low relative

population density of the surrounding non-Indian areas, reservation economies have the ability, if correctly fostered, to be the economic engine of their regions." Our Tribal economic growth will be beneficial, of course, to our Tribal infrastructure and government capacity to address to our people's need. But, we also expect our economic recovery to enrich employment and business opportunities in the local and regional economies.

INDIAN DEVELOPMENT FINANCE CORPORATION SHOULD EXPAND INVESTMENTS IN INDIAN COUNTRY; NOT REPLACE EXISTING OPPORTUNITIES AND SUPPORT MECHANISMS

The financial requirements to adequately address developing Indian reservation economies into the next century will be enormous. There is definite concern that an impression may form that this semi-autonomous financial institution will serve all the financing and management training needs of Indian Country. Federal support systems in existence provide the fundamental support systems necessary for the basic structural developments including financial, physical, and human. The Indian Development Finance Corporation offers access to development capital and short term credit needs, management assistance targeted to Indian Country, and investment opportunities. As Tribal economies mature, we would expect that private financial institutions will negotiate directly with Tribes and their members based on successful experience. And ultimately, Tribal governments should create their own financial institutions for local banking purposes.

As we must dream in Indian Country, we must also be realistic. As an example, the Lummi Indian Business Council realizes several major initiatives need to be implemented simultaneously to break the poverty cycle and create a self-sustaining local economy. Business development on the reservation, such as the vertical integration of the fishing industry, port development, and support services industries will be required. Training of unemployed and low skilled Tribal members to become employed in these businesses is essential. Provision of social services, including individual and family counseling, to alter destructive behavior patterns is a necessity. Improvements of the infrastructure such as water and sewer, utilities, and roads to encourage commercial development is important. We accept the challenge, but we will need more than the Indian Development Finance Corporation to realistically build a self-sustaining economy.

INCENTIVES MUST BE AVAILABLE TO ATTRACT PRIVATE INVESTMENTS ON RESERVATIONS

Private corporate investments in Indian reservation economies are vital to economic development. The Lummi Indian Tribe aggressively and successfully pursued the establishment of a Foreign Trade Zone on the Lummi Reservation chartered by the Tribe and approved by the Foreign Trade Zone Board to attract both foreign and domestic corporations. Unfortunately, corporate America has misgivings about American Indian Tribes and our

sovereign immunity status. An institution such as an Indian Development Finance Corporation should include as a major component of corporate functions, an educational awareness and promotional campaign focused on the business community to foster investments on Indian reservations. And, the corporation should offer assistance in the development of joint ventures, and other profitable Tribal/private business relationships.

I suggest, as we have done several time before with Congress, that a "political risk insurance" structure be offered to the American business community as incentive to invest in Indian Country. I believe the political risk insurance function should be provided through existing quasi-government agencies and private insurance companies by legislatively requiring them to expand their portfolios to Indian reservations as a component of this legislation.

Political risk insurance has been offered by the United States to the American business community as an incentive to invest in Third World Countries. Indian Tribal governments are not unlike Micronesia, Puerto Rico, or other Caribbean and Pacific island nations other than we are generally surrounded by United States territory rather than oceans.

As a prime example, the Overseas Private Investment Corporation (OPIC) was created by the United States in the late 1940's to ensure investments against currency inconvertibility.

The OPIC evolved in the 1950's to provide coverage for expropriation and war and expanded in the 1960's to cover revolution and insurrection as well as offer loan guarantees and feasibility study assistance. By the 1970's OPIC was established as a separate, business-oriented agency mandated to:

> "mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed, friendly countries and areas."

The OPIC promotional literature describes the operations as providing:

> "qualified investors with insurance against certain political risks; loan guarantees; direct loans to small businesses and cooperatives, and a variety of pre-investment and investment-encouragement programs. All are designed to reduce the perceived stumbling blocks and risks associated with overseas investment."

If we spoke of a Tribal Private Investment Corporation (TPIC) and inserted the term "Indian Reservation" for the terms "overseas" or "less developed, friendly countries and areas," wouldn't we be describing a proven effective Federal initiative? Tribal political risk insurance, guaranteed by the Federal government as is the case of OPIC insurance, would insure investors against losses directly attributable to Tribal government actions which negatively impact corporate operations. As with any insurance operations, both the Tribal governments and investing corporations would seek to avoid a "bad risk" label as an incentive to resolve differences.

TRIBAL GOVERNMENTS MUST CONTINUE TO BE RECOGNIZED AS SOVEREIGN WITH POWERS TO TAX

I have a growing concern that the public consensus on the sovereign status of Tribal governments confronts an impass with the subject of Tribal taxation powers. Legislation introduced this Congressional session limiting Tribal taxation capacity on reservations is a prime example of my suspicions.

Tribal self-determination and economic self-sufficiency will require an ability to sustain Tribal operations through profitable Tribal ventures and equitable tax structures. A reasonable Tribal tax on enterprises operating within the reservation is an expected source of necessary revenue in future years. A balance between business profits and reasonable taxes is the inevitable tension in a capitalist democracy. Tribal governments, as with any State or local unit of government, should be expected to levy taxes. Legislatively proposed Federal tax and regulatory relief will certainly offer private enterprise an incentive to invest in Indian Country.

The various State governments impose taxes within Indian reservations which creates a double tax structure on private businesses producing goods or offering services. The proposed legislation should address State-Tribal government relations regarding negotiations on taxation issues. For instance, B&O taxes by State governments should not be allowed within reserva-

tion boundaries to ensure that the incentive to invest in Indian Country are protected from State encroachment.

The successful economic development within the reservation will obviously contribute to the local and regional economy. Although a most sensitive issue, the problem needs to be discussed and addressed for the future realization of cooperative Tribal and State economic developments.

AN AMERICAN INDIAN BUSINESS DEVELOPMENT RESEARCH FUNCTION SHOULD BE CONSIDERED FOR THE CORPORATION OR OTHER ECONOMIC DEVELOPMENT LEGISLATION

The World Bank and the regional international banking institutions all contain research units which compile data, commission research, and disseminate information useful to both business and government sectors. Unfortunately, no aggregate data exists for business development in Indian Country. A data bank of descriptive successful and unsuccessful ventures, alternative Federal/private resources, case histories, and results of economic studies would be useful for Tribes, individual Indian entrepreneurs, and even the international economic development research community. Although specific reservation information would be considered proprietary and thus classified, I believe this function would serve a useful purpose as adjunct to the corporation operations or as a separate entity authorized by companion economic development legislation.

AMERICAN INDIAN DEVELOPMENT FINANCE CORPORATION CONCEPT NEEDS REFINEMENTS-PROTECTIONS - ASSURANCES

As stated in my introduction, in principal we support the establishment of an institution such as the Indian Development Finance Corporation. There are some general and specific unresolved issues which should be addressed and clarified in the statute or accompanying report language for Tribal leadership review.

These issues include the following:

First, Indian governments must have a direct role in the process of making loans to individual businesses to ensure compatible economic development between public and private tribal economic sectors. **Second**, economic theories for development on reservations should reflect the view of promoting "self-sustaining economy which provides jobs for tribal members, reinforces local custom and social organization, and enriches the culture without damaging the natural resources or Indian cultural values." **Third**, the proposed Indian Development Finance Corporation must support and enhance tribal economic infrastructures - including the capacity to monitor, evaluate and adjust economic activity inside the reservation and trade to and from the reservation. **Fourth**, there needs to be strict guarantees that Tribal trust funds are protected and that Tribal assets do not become vulnerable to private interests. **Fifth**, the role and responsibilities of the Board of Directors, their powers and authority and accountability

to Tribal government investors needs to be clearly defined. **Sixth**, the power to invest in businesses off-reservations should be governed by clear standards. **Seventh**, participatory management of Indian businesses in which the corporation has ownership or equity should be thoroughly scrutinized to ensure Tribal priority concerns are not compromised. **Eighth**, the issuance of stock should be controlled by some regulatory standards or Treasury Department approval. **Ninth**, there should be a mechanism established to allow smaller Tribes with limited resources to participate in the Corporate benefits. **Tenth**, the Corporation should be allowed to guarantee the investments made by non-bank lending institutions and Tribal revenue bonds should be eligible for guarantees as should private venture capital investments. **Eleventh**, this legislation could reduce the cost of capital by approximately 25% by exempting the proceeds from <u>all</u> loans and guaranteed financing from federal taxation compared to existing provisions allowing only loans made directly by the Corporation to be made at tax preferred rates.

These suggestions are a combination of our Tribal experience, other Tribal testimony, and recent reports by the Commission on Reservation Economies and the Interior Department Task Force on Economic Development.

LEGISLATION COULD BECOME A MODEL OF TRIBAL-FEDERAL "NATION-TO-NATION" AGREEMENTS

The Indian Development Finance Corporation Act, given the shared roles and responsibilities of the United States and American Indian Tribal governments, could very feasibly serve as a model institution reflecting nation-to-nation agreements. This jointly incorporated institution, serving truly independent functions which embodies U.S. government trust obligations and co-equal Tribal government participation, would be an historic achievement resolving basic Constitutional questions and creating a truly significant milestone for improved Tribal-US relations.

STATEMENT OF THE HONORABLE CHESTER T. FERNANDO

GOVERNOR OF THE PUEBLO OF LAGUNA

BEFORE THE U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

CONCERNING THE PROPOSED INDIAN DEVELOPMENT
FINANCE CORPORATION ACT, S. 721

OCTOBER 15, 1987

GOOD MORNING, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM PLEASE TO BE HERE THIS MORNING IN ORDER TO PRESENT TESTIMONY ON BEHALF OF THE PUEBLO OF LAGUNA REGARDING THE PROPOSED INDIAN DEVELOPMENT FINANCE CORPORATION ACT, S. 721. MY NAME IS CHESTER T. FERNANDO. I AM GOVERNOR OF THE PUEBLO OF LAGUNA, A FEDERAL-RECOGNIZED INDIAN TRIBE LOCATED IN WEST-CENTRAL NEW MEXICO. WITH ME TODAY IS MR. RON SALIMON, PRESIDENT AND GENERAL MANAGER OF LAGUNA INDUSTRIES, INCORPORATED, A FOR PROFIT CORPORATION, WHOLLY-OWNED BY THE PUEBLO OF LAGUNA, AND INCORPORATED UNDER THE LAWS OF THE STATE OF NEW MEXICO. WE APOLOGIZE FOR NOT BEING ABLE TO PRESENT TESTIMONY BEFORE THIS COMMITTEE EARLIER THIS YEAR--OTHER TRIBAL MATTERS AS WELL AS BUSINESS PREVENTED US FROM PARTICIPATING AT THAT TIME ALTHOUGH WE ARE HERE ON RATHER SHORT NOTICE, WE WILL ATTEMPT TO PROVIDE YOU WITH HELPFUL OBSERVATIONS AND SPECIFIC COMMENTS ON THE PROPOSED LEGISLATION. MY COMMENTS WILL BE OF MORE GENERAL NATURE, FOLLOWED BY MR. SOLIMON'S COMMENTS WHICH WILL ADDRESS THE SPECIFIC SECTIONS OF S. 721.

FROM TIME TO TIME I'M SURE THAT YOU'VE PROBABLY HEARD OF THE PUEBLO OF LAGUNA'S EFFORTS TO ENTER THE DEFENSE CONTRACT INDUSTRY. LET ME TELL YOU QUITE FRANKLY THAT IT DIDN'T HAPPEN

OVER NIGHT -- INSTEAD, THE PUEBLO'S EFFORTS SPANNED APPROXIMATELY 6 YEARS. WE WERE VERY FORTUNATE TO HAVE THE RELENTLESS SUPPORT OF OUR CONGRESSIONAL DELEGATION, AND WITH SENATOR DOMENICI TAKING THE LEAD ROLE, CERTAIN STATUTORY, AS WELL AS REGULATORY, CHANGES, ENABLED THE PUEBLO OF LAGUNA, TO ULTIMATELY ENTER INTO THE WORLD OF DEFENSE CONTRACTING. IN ACCOMPLISHING THAT EFFORT ON BEHALF OF OUR PEOPLE , IT IS OUR HOPE ALSO, THAT OTHER INDIAN TRIBAL ORGANIZATIONS WILL FOLLOW OUR LEAD BECAUSE I KNOW IN MY DEALINGS AND INTERACTIONS WITH OTHER TRIBAL LEADERS -- THAT THEY HAVE SOME OBJECTIVE -- EMPLOYMENT FOR THEIR PEOPLE.

LAGUNA INDUSTRIES WAS CERTIFIED AS 8(A) CORPORATION UNDER SECTION 8(A) BY THE SMALL BUSINESS ACT IN AUGUST OF 1984. THAT WAS ACCOMPLISHED PURSUANT TO A MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF DEFENSE AND THE SMALL BUSINESS ADMINISTRATION WHICH WAS FIRST ENTERED IN SEPTEMBER OF 1983. THE PUEBLO'S STATED GOAL WAS TO SEEK BUSINESS OPPORTUNITIES THAT APPEARED TO BE AVAILABLE WITHIN THE VARIOUS PROCUREMENT ACTIVITIES AS THE BRANCHES OF THE ARMED SERVICES.

WE KNOW THAT SOME KIND OF SPONSORSHIP INTO THE DEFENSE CONTRACT INDUSTRY WOULD BE ESSENTIAL. MOREOVER, WE RECOGNIZED AND DISCOVERED THAT THE MILITARY INDUSTRIAL COMPLEX WAS INDEED COMPLEX. WE WERE FORTUNATE TO FIND A WILLING SPONSOR IN THE RAYTHORN COMPANY, AND MORE SPECIFICALLY, ONE OF ITS DIVISIONS-- RAYTHORN SERVICE COMPANY. THEY PROVIDED US WITH SOME EXCELLENT HELP IN THE AREAS OF STRATEGIC PLANNING AND MARKETING, INITIALLY

AT NO COST; BUT WE REALIZED THAT AT SOME POINT IN TIME, WE WOULD HAVE TO PAY FOR THEIR SERVICES. WE LOOKED TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND ITS ADMINISTRATION ON NATIVE AMERICANS TO ASSIST US IN PAYING FOR RAYTHORN'S EXPERTISE IN THE FORM OF A MANAGEMENT SUPPORT, TRAINING, AND TECHNICAL ASSISTANCE CONTRACT, AS WELL AS START-UP EQUIPMENT FOR WHATEVER TYPE OF JOB ME MIGHT END-UP PERFORMING FOR THE MILITARY. MR. DORCAS HARDY, THEN THEN ASSISTANT SECRETARY FOR HUMAN DEVELOPMENT SERVICES AND MR. LYNN ENGLES, COMMISSIONER FOR THE ADMINISTRATION ON NATIVE AMERICANS, WERE EXTREMELY PATIENT WITH OUR EFFORT AND RODE THE SAME ECONOMIC DEVELOPMENT ROLLER COASTER THAT WE DID UNTIL WE FINALLY WERE ABLE TO OBTAIN A DEFENSE CONTRACT. THIS COMBINATION OR PRIVATE SECTOR CORPORATE SPONSORSHIP AND FEDERAL AGENCY FUNDING, AS WELL AS THE PUEBLO'S COMMITMENT GETS OUR RESOURCES IN THE FORMS OF AN INDUSTRIAL PLANT AND EQUITY PARTICIPATION, ARE WHAT EVENTUALLY IMPRESSED THE DEPARTMENT OF THE ARMY, COMMUNICATIONS ELECTRONICS COMMAND, THE FORT MONMOUTH, NEW JERSEY, TO ENTER INTO AN INITIAL $10.4 MILLION WITH LAGUNA INDUSTRIES FOR THE FACILITIZATION OF 2 SHELTER CONFIGURATIONS KNOWN AS THE AN/TRC-173 AND AN/TRC-174 TRANSPORTABLE COMMUNICATION SHELTERS. ONCE WE KNEW THAT THE CONTRACT AWARD WAS IMMINENT, THE NEXT QUESTION WAS - WHAT ABOUT BASIC OPERATING CAPITAL. WELL, THE PUEBLO ASKED MR. SOLIMON TO GO OUT AND BEAT THE BUSHES AND SURE ENOUGH NO FINANCIAL INSTITUTION WAS WILLING TO GAMBLE ON US EVEN WITH ALL THE SUPPORT AND BACKING WE HAD. WE QUICKLY SAW OUT BANKING RELATIONSHIPS IN A NEW LIGHT AND IT WASN'T VERY REASSURING. IT SEEMED TO BE A ONE-SIDED RELATIONSHIP

AND IN FACT IT WAS -- THEY WERE MORE WILLING TO RECEIVE THAN TO GIVE. IT WAS DISAPPOINTING, BUT WE SWALLOWED HARD AND COMMITTED (THE TRIBAL GOVERNMENT-DID) AND $1.5 MILLION DOLLAR LINE OF CREDIT TO THE CORPORATION. WHILE WE WERE ABLE TO EXTEND A LINE OF CREDIT TO LAGUNA INDUSTRIES AT THAT TIME, WHICH THEY HAVE DRAWN-DOWN ON AND ARE BEGINNING TO REPAY, WE WILL NOT BE IN A POSITION TO CONTINUE THIS BECAUSE OF THE NEED TO USE THOSE DOLLARS FOR OTHER TRIBALLY-SPONSORED PROJECTS. WITH THE NEW GROWTH THAT LAGUNA INDUSTRIES IS ANTICIPATING AND ALSO OTHER BUSINESS VENTURES FOR THE PUEBLO, THERE WILL BE A NEED FOR ADDITIONAL CAPITAL. THIS IS WHERE WE SEE A NEED FOR LEGISLATION SUCH AS S. 721 WHICH WOULD PROVIDE A VEHICLE FOR INDIAN SOUND BUSINESS ENTITIES TO ACCESS DEBT AND EQUITY CAPITAL. I APPLAUD YOUR EFFORTS TO DESIGN A NEW APPROACH IN ORDER TO MEET THE UNIQUE NEEDS OF THE NATIVE AMERICAN POPULACE AS WE STRIVE TO DIMINISH THE UNUSUALLY HIGH UNEMPLOYMENT RATES ON OUR HOMELANDS.

UNFORTUNATELY, THE CURRENT FINANCIAL ASSISTANCE PROGRAMS ADMINISTERED BY THE BIA (DIRECT LOANS AND LOAN GUARANTEE) TO ASSIST TRIBES IN THE DEVELOPMENT OF VARIOUS BUSINESS VENTURES ARE EITHER NOT ADEQUATE, FUNDING WISE, OR TO RESTRICTIVE. TECHNICAL ASSISTANCE IS USUALLY NOT READILY AVAILABLE THRU THESE PROGRAM. THIS SITUATION OFTEN IMPACTS ADVERSELY ON POTENTIAL ECONOMIC DEVELOPMENT BECAUSE IT DISCOURAGES TRIBES IN SUCH ATTEMPTS.

MR. CHAIRMAN, I THAN YOU FOR THE OPPORTUNITY TO PRESENT OUR EXPERIENCE TO THE COMMITTEE. I TRUST THAT YOU WILL FIND IT USEFUL AT THIS TIME, I WOULD LIKE TO TURN THE FLOOR OVER TO RON SALOMON, WHO WILL PRESENT SPECIFIC COMMENTS ON S. 721, AS PROPOSED.

PREPARED STATEMENT OF RON SOLIMON, PRESIDENT
LAGUNA INDUSTRIES, INC.

I. INTRODUCTION

The Indian Development Finance Corporation Act, S.721, will establish a federally chartered, mixed ownership development financing institution which will provide a broad range of financial intermediary services including working capitol, direct loans, loan guarantees and technical assistance to Indian business enterprises. The purpose of the Bill is to assist Indian people to attain economic self-sufficiency through the development of Indian-owned, for profit, private sector businesses. The shareholders of the corporation will be Indian tribes, Indian business enterprises, non-Indian businesses, and the United States. The federal by chartered corporation will be funded by congressional appropriations and by purchase of stock by tribes and businesses. The corporation would provide development capitol, loans, and loan guarantees to eligible Indian business enterprises in an aggregate amount of $50 million. The corporation would be set up by an initial $2 million appropriation by congress.

The Pueblo of Laguna operates two wholly-owned tribal enterprises, namely Laguna Industries, Inc., and Laguna Commercial Enterprises. Laguna Industries, Inc., is an industrial manufacturing enterprise, which is qualified as a minority owned business under Section 8(a) of the Small Business Act, 15. U.S.C. §637(a). As an 8(a) enterprise Laguna Industries, Inc., contracts to produce products for the United States Department of Defense. Laguna Commercial Enterprise operates a shopping center and grocery store on the reservation. Both of these enterprises come within the definition of Indian business enterprise in the Act.

The Pueblo of Laguna and its tribally owned business enterprise, fully support passage of the Indian Development Finance Corporation Act, with the following suggestions.

II. COMMENTS

1. The Act should insure that an Indian business enterprise's Section 8(a) status with the Small Business Administration would not be jeopardized by receipt of capital or loans from the Indian Development Finance Corporation. An Indian enterprise becomes eligible for section 8(a) designation and assistance by being part of an "economically disadvantaged Indian tribe". 15 U.S.C. §637(a)(4)(B). In designating an Indian tribe as "economically disadvantaged", the Small Business Act looks to the tribe's access to capital markets, among other things. 15 U.S.C. §637(a)6. Part of the purpose of the Indian Development Finance Corporation is to improve access to capital markets for tribal enterprises. The Indian Development Finance Corporation Act should specifically protect a section 8(a) tribal enterprise from having its designation revoked by the SBA solely on the basis of receiving funding from the Indian Development Finance Corporation. New language should be inserted in the Act as follows: "The designation of an Indian business enterprise as a Section 8(a) enterprise under the Small Business Act, 15 U.S.C. §637(a), shall not be affected by its eligibility for financial assistance under this Act."

2. The funding to be provided by the Indian Development Finance Corporation Act is badly needed on Indian reservations. It has always been difficult for Indian business enterprises to obtain development capitol or loans because they are located on Indian reservations, and because they are often located a great distance from commercial centers. The funding therefore needs to be available to enterprises which are in the process of formation, as well as to well established enterprises. Therefore, we

suggest that the definition of the term "Indian Business Enterprise" in §3(a)(5) be expanded to mean "any commercial, industrial or business activity, established or in formation", and which is operated for a profit, is at least 51% Indian owned, etc. This clarification is needed to insure that enterprises in their earliest stages can receive funding from this corporation.

3. The entire Act should more specifically describe the purpose of an Indian business enterprise as providing employment, training, and services not otherwise available on the reservation, in addition to being Indian owned, operated for a profit, and located on or near a reservation. The definition in Section 3(a)(5)(E)(ii), which permits off reservation enterprises to benefit from the Corporation's assistance, is too general when it simply requires that an off reservation enterprise "contribute to the economy of an Indian Tribe". The definition could be improved if it stated as follows: "Whose principal business activities are determined by the Corporation to be directed at contributing to the economy of any Indian Tribe by providing employment, training, and services not otherwise available on the reservation." The same wording should be added to Section 102(a)(5) in defining the function of an Indian business enterprise. Without this clarification, the term "contributing to the economy of an Indian Tribe" is too ambiguous to be easily implemented by the Corporation.

4. The provisions in Section 102(c) regarding the Corporation's function to guarantee other bank loans to Indian businesses is an important and worthwhile provision. A major impediment to Tribal business development in the past has been the reluctance of banks and other lending institutions to loan to reservation enterprises on trust land. Loan guarantees by this Corporation will be an important step in assuring private lending institutions that they can loan to enterprises located on reservation trust land.

5. The Board of Directors of the Corporation should more strongly represent the Indian Tribes which are shareholders in the Corporation. We recommend that the Board be composed of eight individuals who represent Indian Tribes, rather than the six individuals now provided for. The four Board members representing the non-Indian public should be reduced to two. This should be done because Tribes may end up owning much more than 60 percent of the voting common stock issued by the Corporation. Section 201(b)(1) provides that at least 60 percent of the voting common stock shall be owned by Indian Tribes. Under this provision, Tribes may end up owning 80 or 90 or more percent of the outstanding voting common stock. Therefore the Tribes should be better represented on the Board of Directors.

6. The President of the United States should not have the sole power to appoint the initial members of the Board of Directors. The power should be shared with Congress. We suggest that Section 104(b)(2)(A) be amended to provide that the Speaker of the House of Representatives appoint five members of the Board of Directors, in consultation with the Majority Leader of the Senate.

7. The Act should provide that the Board of Directors be geographically representative of Tribes throughout the country. The members of the Board should not be concentrated from Tribes in any particular area. The President and the Speaker of the House should be required to appoint members of the Board from different geographic regions, and the shareholders should be instructed to thereafter consider electing members of the Board from various parts of the country.

8. The Act should encourage appointment and election of Indian grass roots people on the Board of Directors, rather than only bureaucrats who work for the federal or Tribal governments. Indians who operate or manage enterprises on Reservations would make ideal members of the Board of Directors.

9. The initial term of the appointed Board of Directors should not be indefinite as now provided for in Section 104(b)(3). If the Corporation runs into a problem in selling 10 percent of its common stock to Tribes, the first annual meeting after sale of 10 percent of common stock to Tribes might not occur for many years. Therefore Subsection (3)(A) of Section 104(b) should be amended to read as follows: "The term of office for initial members . . . should expire at the commencement of the first annual meeting of the shareholders of the Corporation held after the date on which subscriptions have been paid for at least 10 percent of the common stock initially offered for sale to the Indian Tribes, or after 3 years, whichever occurs first". After 3 years the shareholders should elect a Board of Directors, even if only a small number of shares have been sold.

10. We also suggest that the terms of the initial Board of Directors be staggered. This would provide for continuity during the critical initial years of the Corporation's existence. We suggest that 5 Directors be replaced at the first annual meeting, and 5 Directors be replaced at the second annual meeting after sale of 10 percent of the common stock to Tribes.

11. Section 109 should specify which committees of Congress the Board of Directors would report to annually. We recommend that the House Interior and Insular Affairs Committee and the Senate Select Committee on Indian Affairs be among the committees to which the Board of Directors would report.

12. Section 201(b)(3) is ambiguous in stating that no person or Tribe may own more than 5 percent of the outstanding voting common stock of the Corporation at any time. It appears that the One Hundred Thousand shares available to Tribes in Section (c) and the stock purchased by the government, is exempt from the 5 percent requirement. It is unclear to us what common stock the 5 percent restriction applies to.

13. There should be a provision in the Act instructing the Board of Directors to issue dividends to shareholders when it is prudent to do so. It will be beneficial to Tribes to receive a good return on their investment in the Corporation.

14. Finally, it is important that the Act insure that the funds provided by the Corporation be distributed more or less equally to Tribes throughout the country. The Act should provide a geographic disbursement formula to insure that the loans and funds are not concentrated in a particular area of the country. The Act could do so by providing for disbursement according to Indian population, or could provide that no more than 20 percent of the disbursed funds be concentrated in any one BIA Area.

III. CONCLUSION

The Pueblo of Laguna and Laguna Industries, Inc., thanks the Select Committee on Indian Affairs for this opportunity to comment on S.721, and urges the Congress to pass the bill.

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Testimony
of the
Pueblo of Sandia
Submitted by Governor Inez Baca
Before the
Senate Select Committee on
Indian Affairs
on
S.721

Mr. Chairman, Members of the Committee:

We thank you for this opportunity to share our views on S.721, the Indian Development Finance Corporation Act.

The Pueblo of Sandia is a small Native American community of 255 people located north of and adjacent to the City of Albuquerque, the largest metropolitan area in the State of New Mexico. The present Pueblo site has been occupied for approximately 600 years. The Pueblo of Sandia has a traditional form of government which is led by a Governor and a Council which is comprised of elders and former Governors of the Pueblo. There is a professional administrative staff under the Governor's Office.

In 1980, Sandia Pueblo carried out a management and development study to assist the Council in making use of its existing and potential economic development options for the purpose of moving toward greater economic self-sufficiency. In the course of the study the Tribe determined that three primary needs had to be addressed: development of tribal revenues sufficient to privide basic governmental services for the Tribe; development of managerial capacities consistent with providing those services and; managing the Tribe's resources to generate needed revenues. These needs were to be addressed in a manner

that respected and supported the beliefs and values that make the Tribe a distinct and unique community. Based on these findings a basic strategy was developed which called for expanding the Tribes' economic base for the purpose of generating needed revenues, developing business management experience and reversing the trend of exporting tribal labor and skill off the Reservation.

We have experienced modest success in carrying out this strategy through: (1) renegotiation of old lease agreements which clearly placed the Pueblo at a disadvantage; (2) development of tribal enterprises; and (3) the establishment of a Tribal taxation program. With these actions, we have substantially reduced unemployment of the Reservation. We have provided jobs to residents of neighboring Indian and non-Indian communities and we have generated revenues for Tribal governmental services and economic development through reinvestment in tribal enterprises and interest bearing work capital loans. However, there is still a great need to stabilize and expand our economic base to ensure that the gains we have made are not lost. Many tribes, like Sandia having achieved modest economic success, experience difficulty in obtaining needed federal assistance to further their economic goals because of changing demographics. For example, our unemployment rate has been substantially reduced through the creation of lower level jobs yet there is a great need for creating management level job opportunities and management training. Making available capitol incentives as proposed in S.721 would go

far in creating an environment for increased employment, further economic activity and expansion of the tribal tax base. We support S.721 as being consistent with addressing economic development financing needs of the Pueblo of Sandia and offer the following recommendations and comments for your consideration:

S.721

We urge the Committee to consider amending S.721 to establish criteria to ensure that an Indian business enterprise assisted by the Corporation will "substantially" contribute to the economy of an Indian Tribe. The resources of the Corporation, relative to the national needs of Indian economic development will be very limited. Congress should ensure that such resources are directed at the economies of Indian Tribes. Such criteria could be based on employment, the purchase of goods and services or revenues to the Tribe. Such criteria should not diminish the requirements proposed in Sec. 102. (b) (2).

The provisions of Sec. 102. (b) (2) which allow a borrower to advance loan proceeds to its members or stockholders should be clarified or deleted. As presently drafted this section may lead to abuses which could undermine an Indian business enterprise and Indian economic development in general.

The provisions of Sec. 104 (b) (5) which restrict Board members to 2 terms should be deleted. With adequate checks and balances on Board member conduct, there is no reason to limit the number of terms an effective Board member may hold.

Resale of stock purchased by the Secretary under Sec. 201 (c) (2) must be restricted to prevent windfall profiterring

and to establish a long term commitment to the success of the Corporation for the benefit of Indian economies. Such restrictions should apply only to stock purchased under Sec. 201 (c) (2) and could be in the form of establishing a minimum time that stock must be held before resale. Such restrictions will also encourage investment by the public and by financially limited Tribes who must carefully weigh investment options.

In closing, we would like to thank the sponsors of S.721 for introuducing legislation which will provide much needed assistance to reservation economies.